

## **STATE-BY-STATE SURVEY OF PROCESS SERVER PROVISIONS**

**Conducted by the Feerick Center for Social Justice at  
Fordham Law School**

**June 2009**

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## I. OVERVIEW

The Feerick Center for Social Justice at Fordham Law School conducted this state-by-state survey of process server provisions. In January 2009, a team of law students under the supervision of faculty supervisors undertook the survey as part of a collaboration with the New York City Department of Consumer Affairs. The project explores the potential of process server education and training as one possible reform to improve industry practice.

New York City, like many other jurisdictions, has experienced an explosion of consumer debt collection filings. Such cases nearly tripled since 2000 (Jim Dwyer, *In Civil Court, One Nation, Under Debt*, N.Y. Times, Oct. 10, 2008, at A19,) climbing to nearly 300,000 in 2008. (Justice Fern A. Fisher, Deputy Chief Administrative Judge, New York City Courts, Presentation to the Civil Court Committee of the New York City Bar (Mar. 16, 2009). Consumer law advocates estimate that over 98% of debtor-defendants are pro se. Debtor-defendants default in approximately 70% of cases. (Data provided by the New York City Civil Court; see also New York State Unified Court System, Court Statistics, *available at* <http://www.nycourts.gov/courts/nyc/civil/statistics.shtml>.) The high default rate prompted the New York City Department of Consumer Affairs (DCA) to conduct a public hearing in June 2008. DCA has stepped up enforcement efforts and conducted a comprehensive examination of its regulatory oversight regime. The court system has also undertaken some measures to address the default rate and the New York Attorney General commenced an enforcement action against a process server company based on a pattern of “sewer service,” which led to the extraordinary step of filing suit to reopen 100,000 defaults. (Joel Stashenko, *Service Concerns Prompt Bid to Reopen 100,000 Defaults*, N.Y.L.J. (July 23, 2009); David B. Caruso, *Court Papers Went Undelivered; Process Server Faces Charges*, N.Y. L.J. (Apr. 15, 2009).)

This state-by-state survey demonstrates that regulation of process servers varies greatly throughout the country. In some states, only law enforcement personnel may serve legal process, whereas in other states process can be served by any adult not a party to the action. Some states (and localities or judicial districts) require licensure, registration, and/or appointment; others do not. Additional provisions mandate education (training and/or testing), bond and/or insurance requirements, and fee guidelines. Some requirements are statutory and regulatory, whereas others are imposed by court rule.

The research was conducted in June 2009 and does not reflect amendments and other developments, which may have taken place since then. We hope this compendium provides a helpful overview of legal requirements in connection with process servers for advocates, government officials, process server agencies and others involved in efforts to ensure that industry practices meet constitutional and legal standards and that vulnerable defendants, such as pro se debtors, receive the notice they are entitled to about actions and proceedings brought against them.

#### **ABOUT THE NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS**

The City of New York created the Department of Consumer Affairs (DCA) in 1969, the first municipal agency in the country focusing on the rights and responsibilities of consumers and businesses. DCA conducts all its efforts with a single purpose: to ensure that consumers and businesses benefit from a fair and vibrant marketplace. DCA achieves its mission as follows:

- Mediating and resolving consumer complaints.
- Licensing fifty-seven categories of businesses and maintaining high standards of fairness and public accountability.
- Enforcing the City's landmark Consumer Protection Law and other related City and State laws.
- Educating New Yorkers about their rights as consumers and responsibilities as businesses.
- Litigating against rule-breaking businesses.

In addition, DCA's Office of Financial Empowerment educates, empowers, and protects New Yorkers with low incomes. These combined efforts efficiently and effectively protect New York consumers.

For more information about DCA, please visit <http://www.nyc.gov/html/dca/html/home/home.shtml>.

#### **ABOUT THE FEERICK CENTER FOR SOCIAL JUSTICE AT FORDHAM LAW SCHOOL**

Fordham Law School's Feerick Center for Social Justice seeks to develop concrete, achievable solutions to discrete problems of urban poverty. To accomplish this mandate, the Center combines:

- the urgency of a social justice mission;
- the creativity of a problem-solving center; and
- the educational focus of a law school.

In conducting its work, the Center engages in fact finding, policy research, legal analysis, convening, and consensus building. Substantively, the Center is committed to working in the areas of hunger/food policy, housing/homelessness, and asset building and consumer law.

For more information about the Feerick Center or about this survey, please contact [feerickcenter@law.fordham.edu](mailto:feerickcenter@law.fordham.edu).

## **II. SUMMARY CHARTS**

### State-by-State Survey of Process Server Requirements

STATE	Educational / Registration / Licensure / Appointment Requirement?	Who administers it?	What is required?	How required?
Alabama	<b>NO</b>			
Alaska	<b>YES – Examination &amp; Licensure</b>	Administered by the State Department of Public Safety.	Passing a 50-question course the first time you obtain license or if license lapses when you reapply.	By statute and regulation. <ul style="list-style-type: none"> <li>Alaska R. Civ. P. 4(c)</li> <li>Alaska Stat. § 22.20.120</li> <li>Alaska Admin. Code § 67.005 et seq.</li> </ul>
Arizona	<b>YES – Examination, Certification, Continuing Legal Education</b>	Administered by the courts.	Application to the court for three-year term of certification. Applicants must pass an examination. Annual continuing education requirements.	By statute. <ul style="list-style-type: none"> <li>Arizona R. Civ. P. 4(c) &amp; (d)</li> <li>Arizona Code of Judicial Admin. § 7-204</li> </ul> By court order. <ul style="list-style-type: none"> <li>Arizona Supreme Court Administrative Order No. 2002-110</li> </ul>
Arkansas	<b>YES – Appointment; No formal training or examination; minimum education requirement in statute</b>	Administered by courts.	Appointment by the court. A Supreme Court Administrative Order sets out minimum requirements, including familiarity with applicable provisions. Judicial districts can impose additional requirements.	By statute. <ul style="list-style-type: none"> <li>Ar. R. Civ. P. 4(c)</li> </ul> By court order. <ul style="list-style-type: none"> <li>Ar. Sup. Ct. Adm. Order No. 20</li> </ul>
California	<b>YES – Registration but no education</b>	Administered by the county clerks.	Registration by the county clerks. County procedures and practices vary. Some counties impose fees, require bonds, and conduct criminal background screen.	By statute. <ul style="list-style-type: none"> <li>Cal. Bus. &amp; Prof. Code § 22350</li> </ul>
Colorado	<b>NO</b>			

STATE	Educational / Registration / Licensure / Appointment Requirement?	Who administers it?	What is required?	How required?
Connecticut	<b>YES – Appointment; Examination (only state marshals server process)</b>	Administered by the State Marshal Commission.	Regulations require the creation of a manual and training program and that applicants take an examination.	By statute and regulation. <ul style="list-style-type: none"> <li>• Conn. Gen. Stat. § 52-50</li> <li>• Conn. Gen. Stat. § 6-38b(f)</li> <li>• Conn. State Agencies § 6-38b et seq.</li> </ul>
Delaware	<b>Registration only</b> required with some individual courts.	Administered by individual courts (Court of Chancery; Family Court; Court of Common Pleas; Justice of the Peace Courts).	Requirements vary, but in the Court of Common Pleas for example applicants submit an affidavit; must pass a criminal background check; must pay a \$50 fee; must reapply annually; must be affiliated with a process server organization.	Varies – mostly by court order [see binder].
DC	<b>NO</b>			
Florida	<b>YES</b> – adopted by the judicial circuit courts (not all)	Administered by individual circuit courts.	<b>Attend seminar and take exam.</b> Varies by court. In the fifth judicial circuits, new applicants must attend a 2-3 hour seminar and take a 45-question, multiple choice exam. After one year and upon renewal of their certification, process servers must take a seminar and exam again.	By statute and court order. <ul style="list-style-type: none"> <li>• Fla. Stat. §§ 48.021, 48.29-31; Fla. R. Civ. P. 1.070; Fla. 2<sup>nd</sup> Cir. AO 2008-21</li> </ul>



STATE	Educational / Registration / Licensure / Appointment Requirement?	Who administers it?	What is required?	How required?
Georgia	<b>Appointment only</b> required by court of permanent process servers	Administered by the county court or the courts in which the action is filed.	In one county, submit application, criminal background check; application reviewed by Permanent Process Server Review Panel.	By statute. <ul style="list-style-type: none"> <li>Official Code of Georgia Annotated § 9-11-4</li> </ul> Proposed legislation was introduced in State House and State Senate in 2007-2008 to create a statewide registration process for private process servers, including examination.
Hawaii	<b>NO –except for 5 kinds of service<sup>1</sup></b>			
Idaho	<b>NO</b>			
Illinois	<b>YES but only for some personnel</b> – process limited to sheriffs, sheriff personnel, & private detectives, but in counties with populations of less than 1,000,000 sheriffs can appoint private process servers	For sheriffs, sheriffs' offices and the Illinois Sheriffs' Association.  For private detectives, the Division of Professional Regulation.  Private process servers appointed by sheriffs do not have any requirements.	For private detectives, examination, training, and continuing education is required by statute.	By statute. <ul style="list-style-type: none"> <li>735 Ill. Comp. Stat. 5/2-202</li> <li>225 Ill. Comp. Stat. 447/1-5</li> <li>225 Ill. Comp. Stat. 447/10-27</li> <li>225 Ill. Comp. Stat. 447/10-35</li> </ul>
Indiana	<b>NO</b>			
Iowa	<b>NO</b>			
Kansas	<b>YES – court appointment</b>	Sheriffs and other law enforcement	n/a	n/a

<sup>1</sup> The Hawaii State Department of Public Safety has a list of authorized civil process servers for five types of service: orders to show cause, writs of attachment and execution; garnishment documents; writs of replevin; and writs of possession. The authorization process requires application to the Deputy Director of Law Enforcement. Training is informal, by either those already on the list or by an attorney. Interview with James L. Propotnick, Deputy Director of Law Enforcement, Hawaii State Department of Public Safety (Apr. 13, 2009).

STATE	Educational / Registration / Licensure / Appointment Requirement?	Who administers it?	What is required?	How required?
	<b>only; varies by court</b>	personnel receive training through the Kansas Law Enforcement Training Center.		
Kentucky	<b>YES – court appointment only; varies by court*</b>			
Louisiana	<b>YES- must be served by sheriff or if sheriff fails, court appointed process server</b>			
Maine	<b>YES – appointment only*</b>			
Maryland	<b>NO</b>			
Massachusetts	<b>YES – appointment only, but only sheriffs, deputy sheriffs, &amp; constables serve process</b>	Constables must be appointed by the mayor or selectmen.	They must provide references, pass a background check, put up a bond and be sworn in.	By statute <ul style="list-style-type: none"> <li>Mass. Ann. Laws ch. 41, § 91- 92</li> </ul>
Michigan	<b>NO</b>			
Minnesota	<b>NO</b>			
Mississippi	<b>NO*</b>			
Missouri	<b>YES – education for St. Louis; appointment by county</b>	For St. Louis, the Sheriff's Office administers education program for private process servers.	Requirements vary by circuit; the City of St. Louis has a very extensive education and certification requirement for private civil process servers.	
Montana	<b>YES – registration &amp; education requirement</b>	Board of Private Security.	Applicants for registration as a process servers must pass an examination based on the handbook for process servers.	By statute. <ul style="list-style-type: none"> <li>Mont. Code Ann. § 25-1- 1104</li> </ul>
Nebraska	<b>YES –bond requirement</b>	Sheriffs and constables serve process; some private process servers must furnish a surety bond of \$15,000; others require court appointment		By statute. <ul style="list-style-type: none"> <li>Neb. Rev. Stat. Ann. § 25-501.01</li> <li>Neb. Rev. Stat. Ann. § 25-506.01</li> </ul>

STATE	Educational / Registration / Licensure / Appointment Requirement?	Who administers it?	What is required?	How required?
Nevada	YES	Statewide Private Investigators Licensing Board.		
New Hampshire	NO			
New Jersey	NO			
New Mexico	NO			
New York	YES – licensure in NYC; no education	NYC DCA licenses process servers in NYC.	Licensure and record keeping.	By local provisions. <ul style="list-style-type: none"> <li>• NYC Admin. Code §§ 20-403</li> <li>• 6 RCNY § 2- 233</li> </ul>
North Carolina	NO			
North Dakota	NO			
Ohio	YES – appointment only	Private process servers are appointed by individual courts.	Must be not a party, over 18 and designated by court.	By statute. <ul style="list-style-type: none"> <li>• Ohio Rule of Civil Procedure 4</li> </ul>
Oklahoma	YES – appointment only	Private process servers are appointed by the presiding judge.	Must be not a party, over 18 and appointed by the court.	By statute. <ul style="list-style-type: none"> <li>• Oklahoma Statute Annotated § 2004</li> </ul>
Oregon	NO			
Pennsylvania	NO			
Rhode Island	NO			
South Carolina	NO			
South Dakota	NO			
Tennessee	NO			
Texas	YES	Process Server Review Board.	Private process servers must attend a civil process service course approved pursuant to State Supreme Court order and apply to the Board for certification.	By Supreme Court rule. <ul style="list-style-type: none"> <li>• Texas Rule of Judicial Admin. Rule 14.</li> </ul>
Utah	NO*			
Vermont	YES – as part of overall law enforcement training	Local sheriff departments.	Training on service of process part of overall training for sheriffs, deputy sheriffs, and constables.	
Virginia	NO			
Washington	NO			
West Virginia	NO			

<b>STATE</b>	<b>Educational / Registration / Licensure / Appointment Requirement?</b>	<b>Who administers it?</b>	<b>What is required?</b>	<b>How required?</b>
Wisconsin	<b>NO</b>			
Wyoming	<b>YES – court application required; varies by court</b>	Various judicial districts.	Application to the court.	

### Process Server Requirements -- Snapshot

State	What is required?	Source of Authority	How administered?	Statewide?
Alaska	-- licensure -- exam	Statutory	Alaska State Department of Public Safety	Statewide
Arizona	-- registration -- initial exam -- continuing legal education	Order of the State Supreme Court	-- Administrative Office of Courts -- Clerks of the Superior Court of each county	Statewide
Connecticut	-- <b>state marshals only</b> -- appointment -- initial exam	Statutory	Connecticut State Marshal Commission	Statewide
Florida	-- 2-3 hour seminar -- exam (initial & with renewal)	Order of judicial district (in place for second and fifth districts)	Judicial districts create Certified Civil Service Process Review Boards	No. Varies by judicial district.
Georgia – <b>proposed</b>	-- initial exam	Statutory	Georgia Administrative Office of the Courts	Statewide
Illinois	-- <b>sheriffs, sheriffs' employees, &amp; private detectives only</b> -- exam, training, continuing education (private detectives only)	Statutory	Illinois State Division of Professional Regulation (only for private detectives)	Statewide. Varies by profession and designation.
Montana	-- initial exam	Statutory	Handbook – developed by Montana State Department of Labor and Industry Exam – administered by the State Board of Private Security	Statewide
Nevada	-- annual examination	Statutory	Nevada State Private Investigators Licensing Board	Statewide
Texas	-- initial and renewal certification require attending a training and taking an exam	Supreme Court Rule	-- certification by the Clerk of the Supreme Court and the Process Server Review Board	Statewide

**Process Server Project**  
**Educational Requirements for Process Servers – By State**

<b>State</b>	<b>Appointment/ License/Regulation Requirement</b>	<b>Applicable Provision</b>	<b>Educational Requirements</b>	<b>Written examination required?</b>	<b>Continuing legal education requirements</b>	<b>Topics covered on exam</b>
Alaska	Alaska has a statewide licensure requirement. The Commissioner of Public Safety oversees licensure and education requirements for process servers. Alaska Admin. Code Ch. 60.	Alaska R. Civ. P. 4(c) Alaska Stat. § 22.20.120 (general duty and authority of the commission) Alaska Admin. Code § 67.005 et seq.	Process servers must take a test the first time they apply for a license and thereafter if their license lapses (but not for renewal)	Yes – 50 question test (25 T&F; 25 multiple choice). State has developed a study guide.	None required	Topics detailed by regulation. 13 Alaska Admin. Code § 67.100. Topics included general knowledge of service process and standards for professional conduct as established in 13 Alaska Admin. Code 67.180.220.
Arizona	Arizona has statewide certification of process servers. In order to be eligible to act as a private process server, all persons must be certified.	Arizona Revised Statute § 11-445(H) Arizona Code of Judicial Administration § 7-204	Process servers must complete a 10 hour course every 12 months: 6 hours of ACPS training and 4 hours of training in the Rules of Civil Procedure	Yes – the written examination is administered by the Clerk of the Superior Court. Ariz. Code of Judicial Admin. § 7-204(D)(3)	All certified process servers must complete at least 10 hours of continuing education every 12 months. Arizona Supreme Court, Administrative Directive 2003-01.	Outlined in a Study Guide available on the Supreme Court's website. <a href="http://www.supreme.state.az.us/cld/pdf/Study%20Guide%20for%20PPS%20Cert.pdf">http://www.supreme.state.az.us/cld/pdf/Study%20Guide%20for%20PPS%20Cert.pdf</a>

<b>State</b>	<b>Appointment/ License/Regulation Requirement</b>	<b>Applicable Provision</b>	<b>Educational Requirements</b>	<b>Written examination required?</b>	<b>Continuing legal education requirements</b>	<b>Topics covered on exam</b>
Arkansas	Appointment by the administrative judge of a district court or any designated circuit judge.	Supreme Court Order. AR Sup. Ct. Adm. Order No. 20 (2008)	The Order requires, inter alia, “familiarity with the various documents to be served.” Order No. 20 § (b)(5).	No, but “[e]ach judicial district, may, with the concurrence of all the circuit judges in that district, prescribe additional qualifications.” Order No. 20 § (b)(5).	Must renew appointment every three years.	N/a
Connecticut	State has created a State Marshal Commission, which oversees civil service of process. By statute, the Commission is mandated to “adopt regulations . . . to establish professional standards, including training requirements and minimum fees for execution and service of process.” Conn. Gen. Stat. 6-38b.	Conn. Gen. Stat. § 52-50  Conn. Gen. Stat. § 6-38b  Conn. State Agencies § 6-38b et seq.	State Marshal Commission has in place educational requirements. Examination and training required by statute. Generally, civil process of service conducted by state marshals only.	Yes, for state marshals. Have to have a raw score of 80% by regulation. Conn. State Agencies § 6-38(b)-3(c).	[Must reapply at the end of each three-year term.]	Regulation requires that “the examination shall include, but not be limited to the following subjects: the functions of a state marshal, including service of process and execution; and (2) familiarity with the applicable portions of the Connecticut General Statutes, the Connecticut Practice book and the commission’s regulations.” Conn. State Agencies § 6-38(b)-3(b).  Regulations also require the development of a training program and manual. Conn. State Agencies § 6-38(b)-4.

<b>State</b>	<b>Appointment/ License/Regulation Requirement</b>	<b>Applicable Provision</b>	<b>Educational Requirements</b>	<b>Written examination required?</b>	<b>Continuing legal education requirements</b>	<b>Topics covered on exam</b>
Delaware	Requirements vary by court. There are no educational requirements but some courts require annual registration with a \$50 fee, among other requirements.	See binder for copies of relevant applications and forms.	N/a	N/a	N/a	N/a



<b>State</b>	<b>Appointment/ License/Regulation Requirement</b>	<b>Applicable Provision</b>	<b>Educational Requirements</b>	<b>Written examination required?</b>	<b>Continuing legal education requirements</b>	<b>Topics covered on exam</b>
Florida	State law provides for an appointment and certification process for certified process servers by the chief judge of each judicial circuit, Fla. Stat. § 48.27 (2009), and an application process for special process servers by sheriffs. Fla. Stat. § 48.021 (2009).	Fla. Stat. § 48.27 (2009).  Fla. Stat. § 48.021 (2009).	Yes	The chief judge of the circuit can require that process server applicants submit to an examination. Fla. Stat. § 48.29(3)(f).  In the fifth circuit, the court has established the Fifth Judicial Circuit Certified Civil Process Server Review Board. In addition the court develops and administers a written examination to all applicants seeking certified civil process server certification. Fla. 2nd Jud. Cir. AO 2008-21.	The fifth circuit requires biennial testing.	In the fifth circuit, the first seminar covers the process statute. The second seminar (in year two following initial certification), the court plans on adding a focus on professionalism.

<b>State</b>	<b>Appointment/ License/Regulation Requirement</b>	<b>Applicable Provision</b>	<b>Educational Requirements</b>	<b>Written examination required?</b>	<b>Continuing legal education requirements</b>	<b>Topics covered on exam</b>
Georgia - proposed	Legislation was proposed to established state- wide registration of private civil process servers.	H.B. 705 (SUB) (Ga. 2009) LC 36 0604S (Ga. 2009)	Process servers would be required to pass a test administered by the Administrative Office of the Courts.	Yes –the Administrative Office of the Courts would be charged with designing and administering the test.	None	The proposed legislation states that “[t]he test will measure the applicant’s knowledge of state law regarding serving of process and other papers on various entities and persons.”
Montana	Any person who makes more than 10 services of process in any 1 year must obtain a registration certificate	Mon. Code Ann. § 25-1- 1101	Applicants must pass a written examination based on a process server handbook. The Montana State Board of Private Security develops and administers the exam; the Montana Department of Labor and Industry publishes the handbook.	Yes	None required	See handbook.

<b>State</b>	<b>Appointment/ License/Regulation Requirement</b>	<b>Applicable Provision</b>	<b>Educational Requirements</b>	<b>Written examination required?</b>	<b>Continuing legal education requirements</b>	<b>Topics covered on exam</b>
Nevada	A statewide licensure requirement is in place.	Nev. Rev. Stat. Ann. § 648.060	No training; just an examination required.	Yes -- applicants must pass an initial one-hour written examination of 50 questions and score 75% or better.	None	None stated.

<b>State</b>	<b>Appointment/ License/Regulation Requirement</b>	<b>Applicable Provision</b>	<b>Educational Requirements</b>	<b>Written examination required?</b>	<b>Continuing legal education requirements</b>	<b>Topics covered on exam</b>
Texas	Certification is required. Must file with the clerk of the Supreme Court a sworn application that they have not been convicted of a crime	Process	servers must complete a 7 hour training course and complete a written examination.	Yes – it is given at the end of the class	There is a 7 hour training course approved by the Supreme Court. It's not clear whether this is the same course they took to get their certificate. New servers and renewing servers must complete this course and pass a written examination.	Unknown

State	Appointment/ License/Regulation Requirement	Applicable Provision	Educational Requirements	Written examination required?	Continuing legal education requirements	Topics covered on exam
St. Louis	All persons who want to become process servers must take and pass a training course	Process	servers must take and pass a training course which consists of 5 nights of classroom instruction with written examination administered by the Sheriff of the City of St. Louis	Yes	Unclear	Unknown

**STATE BY STATE SURVEY  
LICENSURE / REGISTRATION / APPOINTMENT REQUIREMENTS –  
SNAPSHOT**

State	What is required?	Source of Authority	How administered?	Statewide?
Alaska	-- licensure	Statutory	State Department of Public Safety	Statewide
Arizona	-- registration -- appointment	Order of the State Supreme Court	-- Administrative Office of Courts -- Clerks of the Superior Court of each county	Statewide
Arkansas	-- 3-year appointment -- meet minimum qualifications	Order of the State Supreme Court	-- Administrative judges of judicial and circuit courts	Statewide
California	-- registration	Statutory	-- County clerks	-- Statewide requirement -- administered county by county
Connecticut	-- appointment (only state marshals serve civil process)	Statutory	-- Connecticut State Marshal Commission	Statewide
Delaware	-- registration	[Court procedures]	-- various courts	No. Requirements vary by court.
Florida	-- certification	Statutory	-- chief judge of each judicial district	Statewide; administered by judicial districts
Georgia	-- appointment	[Court procedures]	-- various courts	No. Requirements vary by court.
Georgia – Proposed state legislation	-- biannual registration	Statutory	-- Judicial Council of Georgia	Statewide
Hawaii	-- informal list of authorized private process servers maintained	None	Hawaii State Department of Public Safety	N/a
Illinois	-- varies by county based on population; if more than 1,000,000 licensed private detectives must supply copy of license to sheriff	Statutory	-- Sheriffs' offices	Statewide; requirements vary by county based on population
Kansas	--appointment; varies by court	None	-- various courts	No. Requirements

State	What is required?	Source of Authority	How administered?	Statewide?
				vary by court.
Kentucky	-- appointment	Statutory	--by the courts on a case by case basis	Statewide
Louisiana	-- sheriff, otherwise, by court order for private process server	Statutory	--by the courts on a case by case basis	Statewide
Maine	-- sheriff, deputy, person authorized by law, or by court appointment	Statutory	--by the courts on a case by case basis	Statewide
Missouri	-- court appointment; varies by circuit court	Court rule	--varies; court administrator of the circuit court	Varies by circuit court
Missouri – Jackson County / St. Louis	--			
Montana	-- registration	Statutory	-- by the Montana State Department of Labor and Industry	Statewide
Texas	-- certification (3-year term)	Supreme Court Order	-- Process Server Review Board	Statewide

**PROCESS SERVER QUALIFICATIONS – BY STATE**

<b>STATE</b>	<b>PROVISION</b>	<b>REQUIREMENT</b>
Alaska	13 Alaska Admin. Code 67.020 – Process Server Qualifications	<p><b>13 AAC 67.020. PROCESS SERVER QUALIFICATIONS.</b></p> <p>(a) To qualify for a process server license a person must</p> <p>(1) be a United States citizen or an alien lawfully admitted for permanent residency;</p> <p>(2) have resided in the state for at least 30 days immediately preceding the date of application;</p> <p>(3) be at least 21 years of age;</p> <p>(4) be free from any mental or emotional disorder that may adversely affect performance as a process server;</p> <p>(5) be of good moral character as defined in this chapter;</p> <p>(6) have a valid Alaska business license, issued under AS 43.70;</p> <p>(7) have a valid municipal business license if required;</p> <p>(8) have passed the process server examination required under 13 AAC 67.100.</p> <p>(b) A person may not be licensed as a process server if the person</p> <p>(1) has been convicted of a felony, a misdemeanor crime involving abuse or assault; or of a misdemeanor crime involving dishonesty or fraud as defined in AS 11.46 and AS 11.56 during the 10 years immediately preceding the date of application, by a court of this state, the United States, another state or territory, or the military unless a full pardon has been granted; or</p> <p>(2) is doing business under a name that is identical to the name under which a different process server is licensed, or is so similar to it as to create confusion or mislead a reasonable person.</p>
Arizona	Ariz. R. Civ. P. 4(d) & Ariz. Code of Judicial Admin. § 7-204	<p>Ariz. R. Civ. P. 4(d):</p> <p>A private process server . . . shall not be less than twenty-one (21) years of age and shall not be a party, an attorney, or the employee of an attorney in the action whose process is being served.</p> <p>Ariz. Code of Judicial Admin. § 7-204(E)(2)(c)</p> <ul style="list-style-type: none"> <li>- Legal resident of Arizona for at least one year; continually residing in Arizona during this time</li> <li>- Affidavit</li> <li>- Criminal background check</li> </ul>
Arkansas	Arkansas Supreme Court Order Number 20	<p><b>(b) Minimum Qualifications to Serve Process</b> Each person appointed to serve process must have these minimum qualifications:</p> <p>(1) be not less than eighteen years old and a citizen of the United States;</p> <p>(2) have a high school diploma or equivalent;</p> <p>(3) not have been convicted of a crime punishable by imprisonment for more than one year or a crime involving dishonesty or false statement, regardless of the punishment;</p> <p>(4) hold a valid Arkansas driver's license; and</p> <p>(5) demonstrate familiarity with the various documents to be served. Each judicial district may, with the concurrence of all the circuit judges in that district, prescribe additional qualifications.</p>
California	--varies by county	The County of Yolo for example requires process server applicants to undergo a criminal background check.



STATE	PROVISION	REQUIREMENT
Connecticut	Regs. Conn. State Agencies § 6-38b-1 – Qualifications	<p><b>Generally, civil process of service is limited to state marshals.</b></p> <p>Sec. 6-38b-1. Qualifications</p> <p>To qualify as a state marshal pursuant to <a href="#">section 6-38b of the Connecticut General Statutes</a>, a person shall:</p> <ol style="list-style-type: none"> <li>(1) Be an elector in the county in which a vacancy for the position of state marshal exists;</li> <li>(2) Speak, write and read the English language;</li> <li>(3) Be at least 21 years of age;</li> <li>(4) Have been awarded a high school diploma or general equivalency diploma (GED);</li> <li>(5) Be free from any physical, mental or emotional disorder that would prevent the person from performing the duties of a state marshal;</li> <li>(6) Be of good moral character;</li> <li>(7) Have a valid Connecticut driver's license; and</li> <li>(8) Have passed the examination required under <a href="#">section 6-38b-3 of the Regulations of Connecticut State Agencies</a> and have completed all required training. The State Marshal Commission may waive the examination requirement for persons who previously served as deputy sheriffs in the state of Connecticut.</li> </ol>
Florida	<ul style="list-style-type: none"> <li>- Rules vary by court district</li> <li>- Fla. Fifth Jud. Cir. Administrative Order A-2008-21</li> </ul>	<p><b>V. Qualifications.</b></p> <p>Applicants must satisfy the following requirements to qualify for certification in the Fifth Circuit:</p> <ol style="list-style-type: none"> <li>A. Be at least 18 years of age;</li> <li>B. Have no mental or legal disability;</li> <li>C. Be a permanent resident of this State;</li> <li>D. Attest that they have read and become familiar with the laws and rules governing the service of process;</li> <li>E. Take and pass a written examination administered by the Court and approved by the Chief Judge;</li> <li>F. Submit to a background investigation, at the applicant's expense, which shall include any criminal record of the applicant;</li> <li>G. File with the Board a certificate of good conduct certifying: <ol style="list-style-type: none"> <li>a. there is no record of any pending criminal case, whether felony or misdemeanor, against the applicant;</li> <li>b. there is no record of any felony conviction for which civil rights have not been restored;</li> <li>c. there is no record of conviction of the applicant of a misdemeanor involving moral turpitude or dishonesty within the preceding five ( 5 ) years;</li> </ol> </li> <li>M. Take an Oath to Office that he / she will honestly, diligently, and faithfully exercise the duties of a Certified Process Server;</li> </ol>

STATE	PROVISION	REQUIREMENT
Georgia	- Proposed legislation pending	<p>Proposed legislation will require process server applicants:</p> <ul style="list-style-type: none"> <li>- to undergo a criminal record check by the Administrative office of the Courts; and</li> <li>- to take an oath.</li> </ul> <p>[See Binder.]</p>
Kansas	- Rules vary by court district	<p><b>Rule 14 of the Eleventh Judicial District</b></p> <p>The person being appointed as a Process Server shall state in an application, under oath, that he or she has no felony or misdemeanor convictions, or list such convictions. Accompanying the Application for Appointment of Process Server shall be an affidavit by an attorney duly authorized to practice law in the State of Kansas, which attests to the good reputation of the person applying for appointment.</p>
Montana	Mont. Code Ann. § 37-60-303	<p><b>License or registration qualifications.</b></p> <p>(1) Except as provided in subsection (7)(a), an applicant for licensure under this chapter or an applicant for registration as a process server under this chapter is subject to the provisions of this section and shall submit evidence under oath that the applicant:</p> <ul style="list-style-type: none"> <li>(a) is at least 18 years of age;</li> <li>(b) is a citizen of the United States or a legal, permanent resident of the United States;</li> <li>(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;</li> <li>(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;</li> <li>(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;</li> <li>(f) is of good moral character; and</li> <li>(g) has complied with other experience qualifications as may be set by the rules of the board.</li> </ul> <p>....</p> <p>(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.</p>
Nebraska	Neb. Rev. Stat. Ann. §§ 25-507(1) & (2)	<p>§ 25-507. Process server; requirements; bond; cost</p> <p>-- 21 years of age and older</p> <p>-- bond of \$15,000</p>

STATE	PROVISION	REQUIREMENT
Nevada	Nev. Reb. Stat. Ann. § 648.110	<p><b>648.110. Qualifications of applicants; issuance of license.</b></p> <p>1. Before the Board grants any license, the applicant, including each director and officer of a corporate applicant, must:</p> <ul style="list-style-type: none"> <li>(a) Be at least 21 years of age.</li> <li>(b) Be a citizen of the United States or lawfully entitled to remain and work in the United States.</li> <li>(c) Be of good moral character and temperate habits.</li> <li>(d) Have no conviction of: <ul style="list-style-type: none"> <li>(1) A felony relating to the practice for which the applicant wishes to be licensed; or</li> <li>(2) Any crime involving moral turpitude or the illegal use or possession of a dangerous weapon.</li> </ul> </li> </ul> <p>2. Each applicant, or the qualifying agent of a corporate applicant, must:</p> <ul style="list-style-type: none"> <li>(d) If an applicant for a process server's license, have at least 2 years' experience as a process server, or the equivalent thereof, as determined by the Board.</li> <li>(e) If an applicant for a dog handler's license, demonstrate to the satisfaction of the Board his ability to handle, supply and train watchdogs.</li> <li>(f) If an applicant for a license as an intern, have: <ul style="list-style-type: none"> <li>(1) Received: <ul style="list-style-type: none"> <li>(I) A baccalaureate degree from an accredited college or university and have at least 1 year's experience in investigation or polygraphic examination satisfactory to the Board;</li> <li>(II) An associate degree from an accredited college or university and have at least 3 years' experience; or</li> <li>(III) A high school diploma or its equivalent and have at least 5 years' experience; and</li> </ul> </li> <li>(2) Satisfactorily completed a basic course of instruction in polygraphic techniques satisfactory to the Board.</li> </ul> </li> </ul> <p>3. The Board, when satisfied from recommendations and investigation that the applicant is of good character, competency and integrity, may issue and deliver a license to the applicant entitling him to conduct the business for which he is licensed, for the period which ends on July 1 next following the date of issuance.</p> <p>4. For the purposes of this section, 1 year of experience consists of 2,000 hours of experience.</p>
Oklahoma	12 Okla. Stat. tit.12, § 158.1(B)	<p><b>12 Okla. Stat. tit.12, § 158.1(B)</b></p> <p>Any person eighteen (18) years of age or older, of good moral character, and found ethically and mentally fit may obtain a license by filing an application therefor with the court clerk on a verified form to be prescribed by the Administrative Office of the Courts.</p>
Texas	Rule of Judicial Administration 14	<p><b>§ 14.4(a)(2)</b></p> <p>[criminal background check]</p>

**PROCESS SERVER BOND / INSURANCE REQUIREMENTS – BY STATE**

<b>STATE</b>	<b>PROVISION</b>	<b>REQUIREMENT</b>
Alaska	13 Alaska Admin. Code 67.920 – Bond Requirements.	<p><b>13 AAC 67.920. BOND REQUIREMENTS.</b></p> <p>(a) Except as provided in (c) and (d) of this section, an applicant for a process server license shall file with the department a surety bond evidencing liability coverage for fraud, misappropriation or commingling of funds, abuse of process, and malicious prosecution in the minimum amount of \$15,000. The bond must provide that it may not be canceled unless 30 days' notice of cancellation is given to the department.</p> <p>(b) The surety shall file with the department a power of attorney designating its attorney in fact for execution of the bond;</p> <p>(c) If a process serving firm employs four to seven process servers, the process serving firm may provide a single surety bond that covers each of those process servers, provided that the bond is in the minimum amount of \$60,000. A certificate of the bond must be filed with each employee's application for licensure.</p> <p>(d) If a process serving firm employs eight or more process servers, the process serving firm may provide a single surety bond that covers each of those process servers, provided that the bond is in the minimum amount of \$100,000. A certificate of the bond must be filed with each employee's application for license.</p> <p>(e) If a process server is removed from coverage by a firm's bond, the firm shall immediately notify the department in writing.</p> <p>(f) If a process server is not eligible to be covered by a firm's bond or is terminated due to a violation that is a cause for license revocation, this information must be included in the notification submitted under (e) of this section.</p> <p>(g) A process server who is no longer covered by a firm's bond or by the process server's own bond shall return his or her process server license to the department immediately upon termination of coverage. The license will be returned to the process server if the process server submits proof of obtaining the required bond and meets all other eligibility requirements. If a process server fails to submit proof of a new bond within 90 days of the date the process server's previous bond was terminated, the license will be revoked.</p>
California	Cal. Bus. & Prof. Code § 22350	California law requires state-wide registration with county clerks' offices. Requirements vary by county. Many counties require process server applicants to obtain bonds. For example, the County of Yolo requires process servers applicants to take out a bond in the amount of \$2,000.
Florida	Fla. Fifth Jud. Cir. Administrative Order A-2008-21	<p><b>Section V.I</b></p> <p>Execute and file with the Board a bond in the amount of <b>\$5,000.00</b> with a surety company authorized to do business in this State for the benefit of any person injured by misfeasance, malfeasance, neglect of duty, or incompetence of the applicant in connection with his / her duties as a process server.</p>

STATE	PROVISION	REQUIREMENT
Massachusetts	Mass. Ann. Laws ch. 41, § 92 – Service of Civil Process	<p><b>Section 92 – Service of Civil Process</b></p> <p>A constable who has given bond to the town in a sum of not less than one thousand dollars, with sureties approved by the selectmen, conditioned for the faithful performance of his duties in the service of all civil processes committed to him, and has filed the same, with the approval of the selectmen endorsed thereon, with the town clerk, may within his town serve any writ or other process in a personal action in which the damages are not laid at a greater sum than two hundred dollars, and in replevin in which the subject matter does not exceed in value two hundred dollars, and any writ or other process under chapter two hundred and thirty-nine. A constable who has filed such a bond, in a sum of not less than five thousand dollars, may, within his town, also serve any such writ or other process in which the damages are laid at a sum not exceeding two thousand five hundred dollars, and any process in replevin in which the subject matter does not exceed in value two thousand five hundred dollars.</p>
Montana	Mont. Code Ann. § 25-1-1111	<p><b>25-1-1111 Bond required -- levy limited.</b></p> <p>(1) After completing the requirements in Title 37, chapter 60, for registration, a process server shall provide the board of private security with proof of a surety bond of <b>\$ 10,000</b> for an individual or \$ 100,000 for a firm, conditioned upon compliance with this part, all laws governing service of process in this state, and the requirements of Title 37, chapter 60. A clerk of court holding a surety bond for a process server under this section as of June 30, 2007, shall transfer the original bond and any supporting documentation to the board on July 1, 2007.</p> <p>(2) A levying officer may not levy on a judgment that exceeds the value of the bond.</p>
Nebraska	Neb. Rev. Stat. Ann. § 25-507	<p><b>§ 25-507. Process server; requirements; bond; cost</b></p> <p>(1) In any county which does not have a person contracted as a constable pursuant to <a href="#">section 25-2229</a>, any person twenty-one years of age or older or a corporation, partnership, or limited liability company that satisfies the requirements of subsection (2) of this section shall have the same power as a sheriff to execute any service of process or order.</p> <p>(2) Any person or entity may exercise the powers provided in subsection (1) of this section if such person or entity (a) is not a party to the action, (b) is not related to a party to the action, (c) does not have an interest in the action, (d) is not a public official employed by the county where service is made whose duties include service of process, and (e) <b>furnishes a good and sufficient corporate surety bond in the sum of fifteen thousand dollars, such bond being conditioned upon such person or entity faithfully and truly performing the duties of process server.</b></p>

STATE	PROVISION	REQUIREMENT
Nevada	Nev. Rev. Stat. § 648.135	<p>[Insurance requirement]</p> <p>CHAPTER 648. Private Investigators, Private Patrolmen, Polygraphic Examiners, Process Servers, Repossessors and Dog Handlers. Licenses</p> <p><b>648.135. Licensee to maintain insurance or act as self-insurer; minimum limits of liability; proof.</b></p> <p><b>1.</b> Before issuing any license or annual renewal thereof, the board shall require satisfactory proof that the applicant or licensee:</p> <p>    <b>(a)</b> Is covered by a policy of insurance for protection against liability to third persons, with limits of liability in amounts not less than \$200,000, written by an insurance company authorized to do business in this state; or</p> <p>    <b>(b)</b> Possesses and will continue to possess sufficient means to act as a self-insurer against that liability.</p> <p><b>2.</b> Every licensee shall maintain the policy of insurance or self-insurance required by this section. The license of every such licensee is automatically suspended 10 days after receipt by the licensee of notice from the board that the required insurance is not in effect, unless satisfactory proof of insurance is provided to the board within that period.</p> <p><b>3.</b> Proof of insurance or self-insurance must be in such a form as the board may require.</p>
Oklahoma	12 Okla. Stat. tit.12, § 158.1(E)	<p><b>12 Okla. Stat. tit.12, § 158.1(E)</b></p> <p>If, at the time of consideration of the application or renewal, there are no protests and the applicant appears qualified, the application for the license shall be granted by the presiding judge or such associate district judge or district judge as is designated by the presiding judge and, upon executing bond running to the State of Oklahoma in the amount of Five Thousand Dollars (\$ 5,000.00) for faithful performance of his or her duties and filing the bond with the court clerk, the applicant shall be authorized and licensed to serve civil process statewide.</p>

### PROCESS SERVER FEE PROVISIONS – BY STATE

STATE	PROVISION	REQUIREMENT
Alabama	Alabama Code § 12-19-73	The following defendant service fees shall be collected in civil cases in circuit court and district court: For each defendant in excess of one, where personal service is required, there shall be collected a service fee of \$10.00; provided, however, where service on any defendant is by publication or by registered mail, the actual cost of such service shall be collected as the service fee.
Alaska	13 Alaska Admin. Code 67.220 Fees; fee agreements	<p><b>13 AAC 67.220. FEES; FEE AGREEMENTS.</b></p> <p>(a) A fee charged by a process server must be reasonable. The department will, in its discretion, review the fees charged by a process server and will determine if those fees are reasonable by considering</p> <p>(1) the maximum amount that can be recovered by a party as costs under Supreme Court Rule of Administration (11)(a) for the designated service;</p> <p>(2) the time and labor required;</p> <p>(3) the time limitations imposed by the person requesting service; and</p> <p>(4) any special circumstances presented by the person who requested service.</p> <p>(b) A process server shall establish a fee schedule for the information of the general public. The fee schedule must clearly state if the fee to be charged will exceed the maximum amount recoverable by a party as costs under Supreme Court Rule of Administration (11)(a) for the designated service.</p> <p>(c) A process server who has not previously served process for the person requesting service shall communicate the fees to be charged in writing to the</p>

STATE	PROVISION	REQUIREMENT
Connecticut	Conn. Gen. Stat. § 52-261	<p><b>As a general rule, only state marshals serve civil service of process.</b>  Conn. Gen. Stat. § 52-261. Fees and expenses of officers and persons serving process or performing other duties.</p> <p>(a) Except as provided in subsection (b) of this section and section 52-261a, each officer or person who serves process, summons or attachments shall receive a fee of not more than thirty dollars for each process served and an additional fee of thirty dollars for the second and each subsequent service of such process, except that such officer or person shall receive an additional fee of ten dollars for each subsequent service of such process at the same address or for notification of the office of the Attorney General in dissolution and postjudgment proceedings if a party or child is receiving public assistance. Each such officer or person shall also receive the fee set by the Department of Administrative Services for state employees for each mile of travel, to be computed from the place where such officer or person received the process to the place of service, and thence in the case of civil process to the place of return. . . .</p> <p>Conn. Gen. Stat. § 6-38b(f) – State Marshal Commission  The commission, in consultation with the State Marshals Advisory Board, shall adopt regulations in accordance with the provisions of chapter 54 to establish professional standards, including training requirements and minimum fees for execution and service of process.</p> <p>Conn. State Agencies § 6-38b-10. Minimum fees for service of process and execution  Except as otherwise provided in the Connecticut General Statutes:  (1) Each state marshal who serves process, summons or attachments shall receive a fee of not less than five dollars (\$ 5.00) for each process served.  (2) Each state marshal who serves an execution on a summary process judgment shall receive a fee of not less than twelve dollars and fifty cents (\$ 12.50).  (3) Each state marshal who removes a defendant under <a href="#">section 47a-42 of the Connecticut General Statutes</a>, or other occupant bound by a summary process judgment, and the possessions and personal effects of such defendant or other occupant, shall receive a fee of not less than eighteen dollars and seventy-five cents (\$ 18.75).</p>
Maryland	Md. Code Ann., Ct. & Jud. Proc. §§ 7-402, 7-404	<p>§ 7-404. Service of process by private process server</p> <p>If the service of process by a private process server is accomplished, a judge of the District Court or a circuit court may impose costs for the service of process in an amount not to exceed the fees authorized for the service of process by a sheriff under § 7-402 of this subtitle [\$40].</p>



STATE	PROVISION	REQUIREMENT
Massachusetts	Mass. Ann. Laws ch. 262, § 8	<p><b>§ 8. Fees of Sheriffs and Constables.</b></p> <p>The fees of sheriffs, deputy sheriffs and constables shall be as follows:</p> <p>(a) for the service of civil process:</p> <p>(1) for service of an original summons, trustee process, subpoena or scire facias, either by reading it or by leaving a copy thereof, \$20 for each defendant upon whom service is made, except as otherwise provided herein;</p> <p>(2) for service of an original summons and complaint for divorce or for any other service required to be served in hand, \$30 for each defendant upon whom service is made;</p>
Nebraska	Neb. Rev. Stat. Ann. § 25-507(4)	<p><b>§ 25-507. Process server; requirements; bond; cost</b></p> <p>(4) The cost of service of process is taxable as a court cost, and when service of process is made by such person or entity other than a sheriff the cost taxable as a court cost is the lesser of the actual amount incurred for service of process or orders or the statutory fee set for sheriffs in <a href="#">section 33-117</a> [typically \$10].</p>
New Jersey	<p>N.J. Court Rules, R. 4:42-8 – Costs</p> <p>N.J. Stat. § 22A:4-8 – Fees And Mileage Of Sheriffs And Other Officers</p>	<p><b>N.J. Court Rules, R. 4:42-8 – Costs</b></p> <p>(b) Proof of Costs. A party entitled to taxed costs shall file with the clerk of the court an affidavit stating that the disbursements taxable by law and therein set forth have been necessarily incurred and are reasonable in amount, and if incurred for the attendance of witnesses, shall state the number of days of actual attendance and the distance traveled, if mileage is charged. Such costs may include fees paid to a private person serving process pursuant to <a href="#">R. 4:4-3</a>, but not in an amount exceeding allowable sheriff's fees for that service.</p> <p><b>N.J. Stat. § 22A:4-8 – Fees And Mileage Of Sheriffs And Other Officers</b></p> <p>For the services hereinafter enumerated sheriffs and other officers shall receive the following fees: In addition to the mileage allowed by law, for serving every summons and complaint, attachment or any mesne process issuing out of the Superior Court, the sheriff or other officer serving such process shall, for the first defendant or party on whom such process is served, be allowed \$ 22.00 and, for service on the second defendant named therein, \$ 20.00, and for serving such process on any other defendant or defendants named therein, \$ 16.00 each, and no more.</p>

### **III. STATE-BY-STATE SURVEYS**

## ALABAMA PROCESS SERVER REQUIREMENTS

Alabama Rule of Civil Procedure 4(i)(1) governs delivery of service by a process server. The statute provides that process is served by a “sheriff or constable.” Ala. R. Civ. P. Rule 4(i)(1)(A). The statute further provides that “[a]s an alternative to delivery by a sheriff . . . process issuing from any court governed by these rules may be served by any person not less than eighteen (18) years of age, who is not a party.” Rule 4(i)(1)(B).

The decision of whether a sheriff or a private process server serves process is at the discretion of the attorney on the case; attorneys need only provide notice to the court.<sup>2</sup>

### **Appended materials:**

- Alabama Rule of Civil Procedure 4(i)(1) – delivery by a process server
- Alabama Code § 12-19-73

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<sup>2</sup> Interview with Clerk’s Office, Alabama Circuit Court, Autauga County (Apr. 13, 2009). This practice was confirmed by the Alabama State Law Library. Interview with Courtney Burton, Public Services Clerk, Alabama State Law Library (Apr. 13, 2009).

**Alabama Rule of Civil Procedure 4(i)(1) – Delivery By a Process Server**

## **Ala. R. Civ. P. Rule 4**

Rule 4. Process: General and miscellaneous provisions.

(a) Summons or other process.

(1) Upon the filing of the complaint, or other document required to be served in the manner of an original complaint, the clerk shall forthwith issue the required summons or other process for service upon each defendant. Upon request of the plaintiff separate or additional summons shall issue at any time against any defendant.

(2) Form. The summons, or other process or each of them in cases involving multiple defendants, shall be signed by the clerk, contain the name of the court and the name of the first party on each side with an appropriate indication of other parties in cases involving multiple parties, be directed to the defendant or each defendant in cases involving multiple defendants, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that, in case of the defendant's failure to do so, judgment by default will be rendered against the defendant for the relief demanded in the complaint.

(3) Copy of complaint or other document. A copy of the complaint, showing the case number assigned to the action, or other document to be served shall accompany each summons or other process. The plaintiff shall furnish the clerk with sufficient copies of the complaint or other document to be served. Copies are not required if the complaint or other document is filed electronically.

(4) Plaintiff and defendant defined. For the purpose of issuance and service of summons or other process, "plaintiff" shall include any party seeking the issuance of service of summons, and "defendant" shall include any party upon whom service of summons or other process is sought.

(5) Instructions and form. The plaintiff shall furnish the clerk with instructions for service of the complaint or other document and, when requested by the clerk, the plaintiff shall also furnish sufficient properly completed copies of the summons or other process. When the plaintiff has requested the clerk to issue service by certified mail, the plaintiff, at the request of the clerk, shall also furnish properly completed postal forms necessary for such service.

(b) Time limit for service.

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative, after at least fourteen (14) days' notice to the plaintiff, may dismiss the action without prejudice as to the defendant upon whom service was not made or direct that service be effected within a specified time; provided, however, that if the plaintiff shows good cause for the failure to serve the defendant, the court

shall extend the time for service for an appropriate period. This subdivision does not apply to fictitious-party practice pursuant to Rule 9(h) or to service in a foreign country.

(c) Upon whom process served.

Service of process, except service by publication as provided in Rule 4.3, shall be made as follows:

(1) Individual. Upon an individual, other than a minor or an incompetent person, by serving the individual or by leaving a copy of the summons and the complaint at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and the complaint to an agent authorized by appointment or by law to receive service of process;

(2) Minor. Upon a minor by serving any one of the following: the father, the mother, the guardian, the individual having care of the minor or with whom the minor lives, or the spouse, if the minor is married, and, if the minor is over the age of twelve (12) years, by also serving the minor personally;

(3) Incompetent not confined. Upon an incompetent person not confined by serving the incompetent and that person's guardian but, if no guardian has been appointed, by serving the incompetent and a person with whom the incompetent lives or a person who cares for the incompetent;

(4) Incompetent confined. Upon an incompetent person not having a guardian and confined in any institution for the mentally ill or mentally deficient, by serving the superintendent of the institution or similar official or person having the responsibility for custody of the incompetent person;

(5) Incarcerated person. Upon an individual incarcerated in any penal institution or detention facility within this state, by serving the individual, except that when the individual to be served is a minor, by serving any one of the following: the father, the mother, the guardian, the individual having care of the minor, or the spouse, if the minor is married, and, if the minor is over the age of twelve (12) years, by also serving the minor personally;

(6) Corporations and other entities. Upon a domestic or foreign corporation or upon a partnership, limited partnership, limited liability partnership, limited liability company, or unincorporated organization or association, by serving an officer, a partner (other than a limited partner), a managing or general agent, or any agent authorized by appointment or by law to receive service of process.

(7) State. Upon this state or any one of its departments, agencies, offices, or institutions, by serving the officer responsible for the administration of the department, agency, office, or institution, and by serving the attorney general of this state;

(8) Local Governments and other governmental entities. Upon a county, municipal corporation, or any other governmental entity not previously mentioned, or an agency thereof, by serving the chief executive officer or the clerk, or other person designated by appointment or by statute to receive service of process, or upon the attorney general of the state if such service is accompanied by an affidavit of a party or the party's attorney that all such persons described herein are unknown or cannot be located.

(d) Amendment.

The court, within its discretion and upon such terms as are just, may at any time allow or approve the amendment of any process or proof of service thereof, unless the amendment would cause material prejudice to the substantial rights of the party against whom the process was issued.

(e) Service refused.

If service of process is refused, and the certified mail receipt or the return of the person serving process states that service of process has been refused, the clerk shall send by ordinary mail a copy of the summons or other process and complaint or other document to be served to the defendant at the address set forth in the complaint or other document to be served. Service shall be deemed complete when the fact of mailing is entered of record.

(f) Multiple defendants; incomplete service; dismissal of fictitious defendants.

When there are multiple defendants and the summons (or other document to be served) and the complaint have been served on one or more, but not all, of the defendants, the plaintiff may proceed to judgment as to the defendant or defendants on whom process has been served and, if the judgment as to the defendant or defendants who have been served is final in all other respects, it shall be a final judgment. After the entry of judgment, if the plaintiff is able to obtain service on a defendant or defendants not previously served (except, however, defendants designated as fictitious parties as allowed by Rule 9(h), who shall be deemed to have been dismissed voluntarily when the case was announced ready for trial against other defendants sued by their true names), the court shall hear and determine the matter as to such defendant or defendants in the same manner as if such defendant or defendants had originally been brought into court, but such defendant or defendants shall be allowed the benefit of any payment or satisfaction that may have been made on the judgment previously entered in the action.

(g) Effect of availability of alternative or dual modes of service of process.

There shall be no objection to the service of process or notice to litigants, that two or more modes of service of notice are provided by law or under these rules, but service of notice perfected in any one manner or mode that is provided for by law or under these rules shall be deemed sufficient, notwithstanding that other modes or manner of service and notice are provided by law or under these rules.

(h) Acceptance or waiver of service.

A defendant may accept or waive service of process.

(i) Methods of service.

**Service under this rule shall include the following:**

**(1) Delivery by a process server.**

**(A) By sheriff or constable.** When process issued from any court subject to the provisions of these rules is to be delivered personally within this state, the clerk of the court shall deliver or mail the process and sufficient copies of the process and complaint, or other documents to be served, to the sheriff or constable of the county in which the party to be served resides or may be found.

**(B) By designated person.** As an alternative to delivery by the sheriff, or when process is to be delivered personally outside this state, process issuing from any court governed by these rules may be served by any person not less than eighteen (18) years of age, who is not a party.

**(C) How served and returned.** The person serving process shall locate the person to be served and shall deliver a copy of the process and accompanying documents to the person to be served. When the copy of the process has been delivered, the person serving process shall endorse that fact on the process and return it to the clerk, who shall make the appropriate entry on the docket sheet relating to the action. The return shall clearly indicate the name, address, and telephone number of the person serving process. The return of the person serving process in the manner described herein shall be prima facie evidence that process has been served.

**(D) Failure of service.** When the person serving process is unable to serve a copy of the process within thirty (30) days, the person serving process shall endorse that fact and the reason therefor on the process and return the process and copies to the clerk, who shall make the appropriate entry on the docket sheet of the action. In the event of failure of service, the clerk shall forthwith notify, by mail, the attorney of record or, if there is no attorney of record, the party at whose instance process was issued. The clerk shall enter the fact of notification on the docket sheet of the action. Failure to make service within the thirty-(30-)day period and failure to make proof of service do not affect the validity of service.

**(2) Service by certified mail.**

**(A) When proper.** When the plaintiff files a written request with the clerk for service by certified mail, service of process shall be made by that method. Alternatively, the attorney or party filing the process and complaint may initiate service by certified mail as provided in this rule.



(B) How served.

(i) In the event of service by certified mail by the clerk, the clerk shall place a copy of the process and complaint or other document to be served in an envelope and shall address the envelope to the person to be served with instructions to forward. In the case of an entity within the scope of one of the subdivisions of Rule 4(c), the addressee shall be a person described in the appropriate subdivision. The clerk shall affix adequate postage and place the sealed envelope in the United States mail as certified mail with instructions to forward, return receipt requested, with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered. The case number of the case in which the pleading has been filed shall be included on the return receipt. The clerk shall forthwith enter the fact of mailing on the docket sheet of the action and make a similar entry when the return receipt is received.

(ii) Alternatively, the attorney or party filing the process and complaint or other document to be served may obtain a copy of the filed pleading from the clerk or, if the pleading was filed electronically, use the copy returned electronically by the clerk. The attorney or party shall then place that copy of the process and complaint or other document to be served in an envelope and address the envelope to the person to be served with instructions to forward. In the case of an entity within the scope of one of the subdivisions of Rule 4(c), the addressee shall be a person described in the appropriate subdivision. The attorney or party shall affix adequate postage and place the sealed envelope in the United States mail as certified mail with instructions to forward, return receipt requested, with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered. The return receipt shall be addressed to the clerk of the court issuing the process and shall identify the case number of the case in which the pleading has been filed. Upon mailing, the attorney or party shall immediately file with the court an "Affidavit of Certified Mailing of Process and Complaint." That affidavit shall verify that a filed copy of the process and complaint or other document to be served has been mailed by certified mail in accordance with this rule.

(C) When effective. Service by certified mail shall be deemed complete and the time for answering shall run from the date of delivery to the named addressee or the addressee's agent as evidenced by signature on the return receipt. Within the meaning of this subdivision, "agent" means a person or entity specifically authorized by the addressee to receive the addressee's mail and to deliver that mail to the addressee. Such agent's authority shall be conclusively established when the addressee acknowledges actual receipt of the summons and complaint or the court determines that the evidence proves the addressee did actually receive the summons and complaint in time to avoid a default. An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within time to avoid a default. In the case of an entity included in one of the provisions of Rule 4(c), "defendant," within the meaning of this subdivision, shall be such a person described in the applicable subdivision of 4(c).

(D) Failure of delivery. If the receipt shows failure of delivery to the addressee or the addressee's agent, the clerk shall follow the notification procedure set forth in subdivision (i)(1)(D) of this rule. Failure to make service within the thirty-(30-)day period and failure to make proof of service do not affect the validity of service.

**Alabama Code § 12-19-73 – Service Fees**

**Code of Ala. § 12-19-73 (2009)**

§ 12-19-73. Service fees.

(a) The following defendant service fees shall be collected in civil cases in circuit court and district court: For each defendant in excess of one, where personal service is required, there shall be collected a service fee of \$10.00; provided, however, where service on any defendant is by publication or by registered mail, the actual cost of such service shall be collected as the service fee. All service fees shall be paid at the time of filing; except, that prepayments shall not be required if the court finds that payment of such fee will constitute a substantial hardship. A verified statement, signed by the plaintiff and approved by the court, shall be filed with the clerk of court attesting to such substantial hardship.

(b) Fees for personal service collected in civil cases shall be distributed as follows: The first \$3.00 of each such service fee shall be paid to the county general fund, and the balance thereof shall be paid to the State General Fund.

## **ALASKA PROCESS SERVER REQUIREMENTS**

Alaska has extensive regulation of private process servers. Private process servers are licensed by the Alaska State Department of Public Safety . See e.g., Alaska R. Civ. P.(c); 13 Alaska Admin. Code § 67.010. The Department has issued detailed regulations, which include an examination. 13 Alaska Admin. Code § 67.100.

The Department requires a passing grade of at least 80%. The test contains 50 questions, 25 multiple choice and 25 True or False. The Department makes available a study guide, which we requested but never received.

Alaska regulations also govern qualifications of process servers, 13 Alaska Admin. Code § 67.020; set out standards of professional conduct, § 67.180; impose bond requirements on process servers and process service firms, § 67.920; and require publication of process server fees and that such fees be “reasonable,” 67.220.

### **Appended Applicable Provisions:**

- Alaska Rule of Civil Procedure 4
- Alaska Statute § 22.20.100 – duty of the commissioner in the supreme court
- Alaska Statute § 22.20.110 – duty of the commissioner in the court of appeals, the superior court, and district courts
- Alaska Statute § 22.20.120 – general authority and duty of the commissioner
- Alaska Rule of Admin 11 – fees – service of civil process
- Alaska Administrative Code, Chapter 60, Civilian Process Servers

### **Appended Applicable Material:**

- Civilian Process Server Application

**Alaska Rule of Civil Procedure 4**

## **Alaska R. Civ. Proc. 4 (2008)**

Review Court Orders which may amend this Rule

### **Rule 4. PROCESS**

(a) Summons -- Issuance. -- Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver it to the plaintiff or the plaintiff's attorney, who shall cause the summons and a copy of the complaint to be served in accordance with this rule. Upon request of the plaintiff separate or additional summonses shall issue against any defendants.

(b) Summons -- Form.

(1) The summons shall be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney or the plaintiff's name and address if the plaintiff is unrepresented. It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in judgment by default against the defendant for the relief demanded in the complaint. The summons must also notify the defendant that the defendant has a duty to inform the court and all other parties, in writing, of the defendant's or defendant's attorney's current mailing address and telephone number, and to inform the court and all other parties of any changes, as set out in Civil Rule 5(i).

(2) The summons must be on the current version of the summons form developed by the administrative director or a duplicate of the court form. A party or attorney who lodges a duplicate certifies by lodging the duplicate that it conforms to the current version of the court form.

**(c) Methods of Service -- Appointments to Serve Process -- Definition of Peace Officer.**

**(1) Service of all process shall be made by a peace officer, by a person specially appointed by the Commissioner of Public Safety for that purpose or, where a rule so provides, by registered or certified mail.**

(2) A subpoena may be served as provided in Rule 45 without special appointment.

(3) Special appointments for the service of all process relating to remedies for the seizure of persons or property pursuant to Rule 64 or for the service of process to enforce a judgment by writ of execution shall only be made by the Commissioner of Public Safety after a thorough investigation of each applicant, and such appointment may be made subject to such conditions as appear proper in the discretion of the Commissioner for the protection of the public. A person so appointed must secure the assistance of a peace officer for the completion of process in each case in which the person may encounter physical resistance or obstruction to the service of process.

(4) Special appointments for the service of all process other than the process as provided under paragraph (3) of this subdivision shall be made freely when substantial savings in travel fees and costs will result.

(5) The term "peace officer" as used in these rules shall include any officer of the state police, members of the police force of any incorporated city, village or borough, United States Marshals and their deputies, other officers whose duty is to enforce and preserve the public peace, and within the authority conferred upon them, persons specially appointed pursuant to paragraph (3) of this subdivision.

**Alaska Statute § 22.20.100 – duty of the commissioner in the supreme court**



Alaska Stat. § 22.20.100 (2009)

Sec. 22.20.100. Duty of the commissioner in the supreme court

The commissioner is the executive officer of the supreme court and shall serve and execute all process issued by the supreme court or a justice of the supreme court, and shall attend the supreme court, and has the authority necessary for the execution of these duties.

**Alaska Statute § 22.20.110 – duty of the commissioner in the court of appeals, the superior court, and district courts**

**Alaska Stat. § 22.20.110 (2009)**

Sec. 22.20.110. Duty of the commissioner in the court of appeals, the superior court, and district courts

When required by the supreme court, and except as otherwise provided in AS 18.66.160, the commissioner shall serve and execute all process issued by the court of appeals, the superior court, and the district courts; attend to and wait upon grand and petit juries; maintain order; attend the sessions of the courts; and exercise the power and perform the duties concerning all matters within the jurisdiction of the courts as may be assigned. The commissioner is the executive officer of the court of appeals, the superior court, and district courts.

**Alaska Statute § 22.20.120 – general authority and duty of the commissioner**

Alaska Stat. § 22.20.120 (2009)

Sec. 22.20.120. General authority and duty of the commissioner

The authority necessary for the lawful performance of the duties of execution of service of process, seizure and detention of property, the sale of property forfeited or levied upon, and arrest of persons, in connection with civil matters, is vested in the commissioner. Any court of the state issuing any process may direct the process for execution of service to the commissioner or the designee of the commissioner.

**Alaska Rule of Admin 11 – fees – service of civil process**

Alaska R. of Admin. 11 (2008)

Review Court Orders which may amend this Rule

Rule 11. FEES--SERVICE OF CIVIL PROCESS

(a) The following schedule establishes the maximum amount recoverable from another party as costs for the services designated.

(1) Service of Process:

(i) For service of any summons or subpoena -- each person on whom service is made \$ 45.00

(ii) For service of any warrant, attachment, notice of levy, intent to levy or garnishment, execution or other writ -- each person on whom service is made 45.00

(iii) For each hour in excess of two actually and necessarily spent to obtain service under (i) or (ii) above 30.00

(iv) If more than one document involving the same case is given to the same individual at the same time only one fee shall be charged.

(2) Sales of Property Pursuant to Final Process:

For advertising and disposing of property by sale, set-off, or otherwise, according to law, pursuant to a writ of possession, partition, execution, or any final process and for receiving and paying over money on account of property sold -- on any sum not exceeding five hundred dollars Seven

percent

And on any excess over five hundred dollars and not exceeding ten thousand dollars Four

percent

And on any excess over ten thousand dollars and not exceeding fifty thousand dollars Two

and

And on any excess over fifty thousand dollars                      One and one-  
quarter percent

(3) Deeds:

(4) Copies:

First page or fraction thereof	1.00
Each additional page or fraction thereof	.25

(6) **Keeping Personal Property:**

(7) Mileage

allowed for



state employees\*

(8) No fee shall be charged under this schedule for any service rendered to the state or any agency or department thereof

(b) All service of civil process and duties ancillary thereto under the Rules of Civil Procedure and applicable statutes shall be performed by private persons appointed under Civil Rule 4(c)(1), (4)(c)(3) or 4(c)(4), or by persons authorized by Civil Rule 45(c); provided, that a member of the Alaska State Troopers or other peace officer may render assistance to a process server as provided in Civil Rule 4(c)(3) or serve any process when directed to do so by the Commissioner of Public Safety. In this paragraph, "civil process" includes any summons, subpoena, attachment, notice of levy, intent to levy or garnishment, execution, or other writ in a civil action, but does not include any process, civil or criminal, served on behalf of the state for any department or agency thereof.

**Alaska Administrative Code, Chapter 60, Civilian Process Servers**

**CIVILIAN PROCESS SERVER APPLICATION INFORMATION**

Please review the regulations for Civilian Process Server Licensing.

To obtain an application packet please contact the Permits and Licensing Office of the Division of Public Safety, Statewide Services Division, Permits and Licensing office at (907) 269-0393, or request an application packet by writing to the following address:

**Permits and Licensing Office  
Civilian Process Server Licensing  
5700 East Tudor Road  
Anchorage, AK 99506**

Once you have reviewed the materials for Civilian Process Server Examination please call the office and schedule a test.

For those applying in outlying areas there are proctors, when available, at Judicial Services offices or at Alaska State Troopers posts for administering tests.

When an examination is scheduled please bring with you the application (completed, signed and notarized) with a check payable to the State of Alaska in the amount of \$25.00.

**ALASKA ADMINISTRATIVE CODE**

**TITLE 13. PUBLIC SAFETY**

**PART 3. OFFICE OF THE COMMISSIONER**

**CHAPTER 60. CIVILIAN PROCESS SERVERS**

*Current through October, 1999 (Register 151)*

**ARTICLE 1. CIVILIAN PROCESS SERVER APPLICATION AND LICENSING REQUIREMENTS**

**13 AAC 67.005. PURPOSE AND SCOPE OF CIVILIAN PROCESS SERVER REGULATIONS.**

In accordance with AS 22.20, it is the duty of the commissioner of public safety to provide for the proper service of process issued by the supreme court and all lower state courts. The supreme court, in Rule 11(b) of the Rules of Administration, Rules 4(c)(3) and 45 of the Rules of Civil Procedure, and Rule 17 of the Rules of Criminal Procedure, has specifically provided that process may be served by private persons appointed or designated by the commissioner. A civilian process server is a private person who, by virtue of holding a license issued under this chapter, may serve process under AS 22.20.120. The provisions of 13 AAC 67.010 - 13 AAC 67.990 address the application and licensing requirements, disciplinary guidelines, and standards of professional conduct that the commissioner finds are necessary to assure that the civilian service of process is done in accordance with the rules of the supreme court and in a manner that protects the public.

*(Eff. 11/11/92, Register 124)*

**AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120 CIVILIAN PROCESS SERVER REGULATIONS** FORMS\CPSREGS Page 2 March 7, 2006

### **13 AAC 67.010. LICENSE REQUIREMENT.**

Except as otherwise provided in Supreme Court civil, criminal, and administrative rules, a person may not serve process unless that person is licensed by the department in accordance with this chapter.

*(Eff. 11/11/92 Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

### **13 AAC 67.020. PROCESS SERVER QUALIFICATIONS.**

(a) To qualify for a process server license a person must

- (1) be a United States citizen or an alien lawfully admitted for permanent residency;
- (2) have resided in the state for at least 30 days immediately preceding the date of application;
- (3) be at least 21 years of age;
- (4) be free from any mental or emotional disorder that may adversely affect performance as a process server;
- (5) be of good moral character as defined in this chapter;
- (6) have a valid Alaska business license, issued under AS 43.70;
- (7) have a valid municipal business license if required;
- (8) have passed the process server examination required under 13 AAC 67.100.

(b) A person may not be licensed as a process server if the person

- (1) has been convicted of a felony, a misdemeanor crime involving abuse or assault; or of a misdemeanor crime involving dishonesty or fraud as defined in AS 11.46 and AS 11.56 during the 10 years immediately preceding the date of application, by a court of this state, the United States, another state or territory, or the military unless a full pardon has been granted; or
- (2) is doing business under a name that is identical to the name under which a different process server is licensed, or is so similar to it as to create confusion or mislead a reasonable person.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

### **13 AAC 67.030. PROCESS SERVER APPLICATION AND SUPPORTING DOCUMENTS.**

- (a) An application for a process server license must be submitted to the department on a form provided by the department printed legibly or typewritten. An application must include the following information about the applicant: **CIVILIAN PROCESS SERVER REGULATIONS**

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- (1) full name;
  - (2) business name;
  - (3) residence address;
  - (4) residence telephone number;
  - (5) residence mail address;
  - (6) business location;
  - (7) business telephone number; facsimile number;
  - (8) business mail address; e-mail address;
  - (9) sex;
  - (10) height and weight;
  - (11) hair and eye color;
  - (12) date of birth;
  - (13) Alaska drivers license number and expiration date, or an identification card number issued by the department;
  - (14) statement of citizenship;
  - (15) criminal arrest and conviction record;
  - (16) employment history for the five years immediately preceding the date of application;
  - (17) the name of at least three persons, at least one of whom is a resident of the state, who can attest to the applicant's good character; and
  - (18) the name and address of all business affiliations of the applicant or the applicant's spouse.
- (b) The application must include:
- (1) a sworn statement that the applicant is free from any mental or emotional disorder that may adversely affect performance as a process server;
  - (2) a sworn statement that the applicant has read and understands 13 AAC 67.010 - 13 AAC 67.990;
  - (3) a sworn statement that the information contained in the application is true; and
  - (4) a signature and valid notarization of the signature.
- (c) The following items must accompany the application:
- (1) two sets of classifiable fingerprints on a Federal Bureau of Investigation Applicant Card (FD-258);
  - (2) a fee payable to the department for fingerprint processing fees under 13 AAC

25.400(a)(4)(B) and fees charged by the Federal Bureau of Investigation or other government agency for processing fingerprints or obtaining criminal records through that agency;

- (3) proof of compliance with the surety bond requirements of 13 AAC 67.920;
- (4) a non-refundable application fee of \$25; and
- (5) a copy of the applicant's valid Alaska business license and, if required, a valid municipal business license.

*(Eff. 11/11/92, Register 124; am 4/2/94, Register 129)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

**13 AAC 67.040. INCOMPLETE AND ABANDONED APPLICATIONS.**

- (a) An application is incomplete if it does not include all of the information, signatures, notarizations, and supporting documents required in 13 AAC 67.030.
- (b) If the department receives an incomplete application, or an application is made on an obsolete form, the department will return the application and all supporting documents to the applicant. If the applicant completes the application process within one year of the date of the initial application, a new application fee is not required.
- (c) In the absence of special circumstances, the department will consider an application abandoned if the applicant fails to appear for examination at the time fixed without first obtaining a postponement, or the applicant, after two postponements, fails to appear for examination at the time fixed. An abandoned application is denied without prejudice.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

**13 AAC 67.050. DEPARTMENT REVIEW OF APPLICATIONS.**

- (a) The department will, in its discretion, conduct a background investigation of an applicant for a license to determine if the applicant possesses the qualifications set out in 13 AAC 67.020.
  - (b) If the department has reason to believe that an applicant has a past or present mental or emotional condition that could adversely affect the applicant's performance as a process server, the department will, in its discretion, condition approval of the application on receipt of a report from a licensed psychiatrist or psychologist indicating that the applicant is currently free from such a condition.
  - (c) The information in a process server's application and license file is confidential and available only for use by the department in carrying out the requirements of this chapter or for review by an applicant or licensee as provided in this section. An applicant or licensee may review all documents relating to the applicant or licensee except for
- (1) information supplied to the department with the understanding that the information **CIVILIAN**

- or the source of the information would remain confidential; and
- (2) examination documents required to be kept confidential under 13 AAC 67.160.
- (d) Notwithstanding the provisions of (c)(1) of this section, information that serves as a basis for a decision to deny, suspend, or revoke a license must be revealed to the applicant or licensee upon request.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

**13 AAC 67.060.DENIAL OF LICENSE.**

The department will, in its discretion, deny an application if the person is found to be unqualified for a license. If a person's application for a license is denied, the department will notify the applicant of the applicant's right to a hearing under 13 AAC 67.290.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

**13 AAC 67.070. PROCESS SERVER LICENSE.**

- (a) After an applicant has passed the examination required in 13 AAC 67.100, the department has completed any background investigation it deemed necessary, and the department has approved the application, the department will issue a license to the applicant in the form of an identification card. A process server license remains the property of the state.
- (b) A license is effective on the date it is issued by the department. A license may not be issued with an effective date earlier than the date it is issued by the department. A license expires two years after its date of issue.
- (c) A process server may not allow another person to use or possess the process server's license.
- (d) A process server shall carry the license when serving process and shall, upon request, display the license to the person making the request.
- (e) A person whose license as a process server has been expired for less than one year may reinstate the license by
- (1) applying on a form provided by the department; and
- (2) paying the application fee required in 13 AAC 67.030.
- (f) A process server whose license has been expired for one year or more must submit a new license application in accordance with 13 AAC 67.020 - 13 AAC 67.030.
- (g) If a person's process server license is suspended or revoked, that person shall return the

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license to the department immediately.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

### **13 AAC 67.080.APPLICATION FOR RENEWAL OF PROCESS SERVER LICENSE.**

An application for the renewal of a process server license must

- (1) be made on the forms provided by the department;
- (2) contain a complete list of all business names under which the applicant has worked during the concluding license period;
- (3) be received by the department at least 30 days before the date of expiration, so that the application for renewal can be processed before the license expires; and
- (4) be accompanied by a non-refundable application fee of \$25.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

## **ARTICLE 2. EXAMINATION PROCEDURES**

### **13 AAC 67.100. EXAMINATION CONTENT.**

- (a) The department will examine each applicant for a process server license to determine the applicant's knowledge of service of process and familiarity with the applicable portions of the Alaska Administrative Code, the Alaska Statutes, the Supreme Court rules of civil and criminal procedure, and Supreme Court rules of administration.
- (b) The examination is a written examination prepared by the department.
- (c) The examination consists of the following subjects:
  - (1) general knowledge of service of process;
  - (2) receipt, preparation, service, and return of process, and fees for process, originating in the state, including a civil subpoena, civil summons, civil show cause order, civil temporary restraining order, civil preliminary injunction, civil prejudgment attachment, and civil execution;
  - (3) receipt, preparation, service, and return of process, and fees for process, originating outside the state, including a civil subpoena, civil summons, civil show cause order, civil temporary restraining order, and civil preliminary injunction; and
  - (4) standards for professional conduct as established in 13 AAC 67.180.220. **CIVILIAN PROCESS SERVER REGULATIONS**

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*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

**13 AAC 67.110. TIME AND PLACE OF EXAMINATION.**

- (a) An applicant must submit a completed application form and the application fee to the department before an examination will be scheduled. An applicant may then schedule an examination at any department office designated by the commissioner as a place for examination.
- (b) Following the receipt of a scheduling request, the department will notify the applicant of the time and place of the examination at least 10 days before the examination.
- (c) The department will, in its discretion, grant up to two postponements to an applicant who, for reasonable cause, is prevented from appearing for the examination at the time fixed. The office administering the examination no later than one day before the day the examination was scheduled must receive a request for postponement.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

**13 AAC 67.120. CONDUCT DURING EXAMINATION.**

- (a) An applicant may not have any papers or objects on the examination table other than those permitted by the proctor.
- (b) The department will provide an examination answer sheet upon which the applicant will write applicant's name and the date of the examination. An applicant may not write on or in any other way deface the examination booklet. Writing on or defacing an examination booklet will result in automatic failure of the examination.
- (c) While the examination is in progress, the applicant may not leave the examination room for any reason unless accompanied by the proctor.
- (d) Communicating with any person other than the proctor during the examination will result in automatic failure of the examination.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

**13 AAC 67.140. SCORES AND REEXAMINATION.**

- (a) A raw score of at least 80 percent is required to pass the examination.
- (b) An applicant who fails to attain the required passing score must wait 10 days before submitting a scheduling request under 13 AAC 67.110.
- (c) Upon the applicant's written request, the department will, in its discretion, waive the 10-day waiting period required in (b) of this section for an applicant whom **CIVILIAN**

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- (1) can demonstrate good cause for granting such a waiver; and
- (2) complies with all other applicable provisions of this chapter.
- (d) An applicant who has failed the examination three times shall pay a \$10 reexamination fee for each subsequent examination.
- (e) An applicant who fails to pass the examination within one year of when the applicant first took the examination shall submit a new application before retaking the examination.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

### **13 AAC 67.150. RECONSIDERATION OF EXAMINATION.**

Upon the applicant's written request, the department will, in its discretion, reconsider an applicant's examination results if the applicant can show good cause for reconsideration. Reconsideration may include rescoring the examination or reevaluating the methods used in scoring the examination.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

### **13 AAC 67.160. EXAMINATION REVIEW.**

- (a) All examination papers are the property of the department and will not be returned to the applicant. An applicant's examination answer sheets are preserved in the applicant's file and may be inspected by an applicant except during the seven days immediately preceding the day the applicant is scheduled to retake an examination. While reviewing an examination, an applicant may not make copies or take written notes of any kind.
- (b) An applicant may obtain information concerning the types of items failed.
- (c) The written examination booklet is not open for inspection by an applicant until after the examination booklet is no longer used for testing, and then only in the presence of the commissioner or the commissioner's designee. Specific examination questions currently in use may only be inspected as authorized by the commissioner.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

## **ARTICLE 3. STANDARDS OF PROFESSIONAL CONDUCT**

### **13 AAC 67.180. PROFESSIONAL CONDUCT.**

A process server shall

- (1) act with complete integrity in professional matters concerning the service of process;
- (2) be completely truthful in all professional reports, statements, or testimony, and not make misleading, deceptive, or untrue statements in the course of serving process;

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- (3) notify his or her employer, client, or appropriate authority of any circumstance in which the safekeeping of process or property is in jeopardy, including a situation where the process server's professional judgment is overruled by the process server's employer;
- (4) not engage in the practice of law, give legal advice, or otherwise act in a manner that a reasonable person would interpret as engaging in the practice of law;
- (5) not knowingly associate with or permit the use of the process server's name or firm name by a person or firm that the process server knows or has reason to believe is engaging in a business or professional practice in a fraudulent or dishonest manner;
- (6) inform the department if the process server has knowledge or to believe that another person or firm is in violation of a regulation in this chapter, and cooperate with the department by furnishing all further information or assistance required;
- (7) adhere to all applicable state and municipal laws, rules of court, and department directives concerning the service of process, and not knowingly serve process in violation of those laws, rules, or directives;
- (8) make every reasonable effort to provide professional services in a complete and efficient manner so as not to delay a court action.
- (9) not serve process if the process server suffers from any mental or emotional condition that may adversely affect his or her performance as a process server.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

**13 AAC 67.190. CONFLICT OF INTEREST.**

- (a) A process server shall
  - (1) attempt to avoid all conflicts of interest with the process server's employer or client;
  - (2) promptly inform the employer or client of any business association, interest, or circumstance that could influence the process server's judgment or quality of service to the employer or client;
  - (3) not accept financial or other compensation from more than one party to a court action for services in that action.
- (b) If a process server enters public service as a member, advisor, or employee of a government body, the process server may not take any action on process previously served by the process server or served by the process server's former private sector employer while the process server worked for that employer.
- (c) A process server may not be employed to serve process for any firm, business, or corporation other than a process serving firm.

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- (d) A process server may not be employed by more than one process serving firm at one time and may not contract or solicit process business for more than one process serving firm at one time.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

**13 AAC 67.200. REASSIGNMENT OF PROCESS AND RETURNS TO COURT.**

- (a) A process server may not reassign process to another process server unless that person is within the process server's own firm. Process that the process server cannot serve because of a conflict of interest or because of location must be returned to the clerk of the court for reassignment to another process server. If process is returned to the clerk of the court within 48 hours, no return of service is required.
- (b) A process server who conducts a sale of personal or real property as a part of serving process shall transmit all money received to the court and may not withhold process server fees.
- (c) When serving a levy for the collection of money on a third party, the process server shall serve the third party with a Notice of Levy By a Court Writ and advise the third party that all checks must be made payable to the clerk of court.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

**13 AAC 67.210. DESIGNATION; ADVERTISING.**

- (a) A process server may not use
- (1) any corporate name, including initials, that projects the image of a public law enforcement agency;
  - (2) the terminology "police" or "officer of the court" to identify the process server; or
  - (3) the words "federal," "state," "U.S.," "United States," "Alaska," or the name or initials of any specific court, city, borough, municipality, or governmental agency in a manner that suggests an official connection with any governmental entity, except to say the process server is licensed by the state.
- (b) Advertising and other public communication by a process server must not
- (1) misrepresent or fail to disclose relevant facts;
  - (2) create false or unjustified expectations of favorable results;
  - (3) set forth fees other than those authorized by 13 AAC 67.220; or
  - (4) contain any representation or implication that is false, fraudulent, or unfair, or that probably would deceive or mislead an ordinary person;
  - (5) include the seal of the State of Alaska in any manner; or **CIVILIAN PROCESS SERVER**

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- (6) imply a process server is a police officer or peace officer.
- (c) A process server's license may only be used in connection with the service of process. No badge or other emblem other than the license issued by the department may be displayed while serving process.
- (d) A process server may not wear a uniform of any kind that suggests an official connection with a law enforcement agency or government entity.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

### **13 AAC 67.220. FEES; FEE AGREEMENTS.**

- (a) A fee charged by a process server must be reasonable. The department will, in its discretion, review the fees charged by a process server and will determine if those fees are reasonable by considering
  - (1) the maximum amount that can be recovered by a party as costs under Supreme Court Rule of Administration (11)(a) for the designated service;
  - (2) the time and labor required;
  - (3) the time limitations imposed by the person requesting service; and
  - (4) any special circumstances presented by the person who requested service.
- (b) A process server shall establish a fee schedule for the information of the general public. The fee schedule must clearly state if the fee to be charged will exceed the maximum amount recoverable by a party as costs under Supreme Court Rule of Administration (11)(a) for the designated service.
- (c) A process server who has not previously served process for the person requesting service shall communicate the fees to be charged in writing to the person requesting service before service is attempted or within a reasonable time thereafter.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

### **ARTICLE 4. DISCIPLINARY GUIDELINES**

#### **13 AAC 67.240. SUSPENSION AND REVOCATION OF LICENSE.**

- (a) The department will, in its discretion, suspend a license when it determines, following an investigation, that the process server
  - (1) lacks the ability, knowledge, skill, or professional judgment to perform the **CIVILIAN**

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professional duties of a process server as required by AS 22.20, this chapter, rules of court, or department procedures;

(2) failed to perform the duties and responsibilities of a process server as required by AS 22.20, this chapter, rules of court, or department procedures, but that failure is not a cause for revocation under (b) of this section;

(3) failed to notify the department of a change of name, address, or telephone number as required by 13 AAC 67.910; or

(4) failed to comply with the fee requirements of 13 AAC 67.220.

(b) The department will, in its discretion, revoke a license when it determines, following an investigation, that the process server

(1) is not qualified to hold a license under 13 AAC 67.020;

(2) has intentionally or recklessly failed to perform the duties and responsibilities of a process server as required by AS 22.20, this chapter, rules of court, or department procedures, and that failure resulted in

(a) the life, health, or safety of a member of the public being placed in jeopardy of death or injury; or

(b) a person's property being placed in jeopardy of loss or injury;

(3) has been convicted since licensure of a felony, a misdemeanor crime involving abuse or assault; or a misdemeanor crime involving dishonesty or fraud as defined in AS 11.46 and AS 11.56;

(4) falsified or omitted information required to be provided in the process server's license application or in the supporting documents;

(5) impersonated a law enforcement officer;

(6) misapplied property;

(7) engaged in misaccounting;

(8) engaged in misconduct with respect to the examination required under 13 AAC 67.100;

(9) failed to comply with AS 22.20, this chapter, rules of court, or department procedures relating to the service of process;

(10) failed to maintain the surety bond required by 13 AAC 67.920;

(11) engaged in conduct that is a cause for license suspension under (a) of this section and has already had two license suspensions; or **CIVILIAN PROCESS SERVER**

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(12) failed to keep adequate records as required by 13 AAC 67.930.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

**13 AAC 67.250. PERIOD OF SUSPENSION OR REVOCATION.**

- (a) The department will, in its discretion, suspend a process server license under 13 AAC 67.240(a) for a minimum of 30 days for a first offense and up to a maximum of six months for a second offense;
- (b) A person whose process server's license has been revoked under 13 AAC 67.240(b) may not reapply for a new license
  - (1) for one year from the date the previous license was revoked for conduct described in 13 AAC 67.240(b)(8), (b)(9), (b)(10), (b)(11), or (b)(12);
  - (2) for five years from the date the previous license was revoked for conduct described in 13 AAC 67.240(b)(4), (b)(5), (b)(6), or (b)(7);
  - (3) if the previous license was revoked for conduct described in 13 AAC 67.240(b)(2) or (b)(3).
- (c) Nothing in this section or in 13 AAC 67.240 precludes the department from imposing lesser penalties than those described, depending upon the circumstances of a particular case.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

**13 AAC 67.260. REEXAMINATION.**

The department will, in its discretion and for good cause, require a licensed process server to retake the examination required in 13 AAC 67.100. A process server's failure to retake the examination will result in suspension of the license until the written examination is successfully completed. The department will give at least 10 days notice to the licensee before requiring the examination.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

**13 AAC 67.280. APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT.**

Except as otherwise provided in 13 AAC 67.280 - 13 AAC 67.310, the provisions of the AS 44.62 (Administrative Procedure Act), not including AS 44.62.550, apply to all actions taken under this chapter.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120* **CIVILIAN PROCESS SERVER REGULATIONS**

## **ARTICLE 5. ADMINISTRATIVE HEARINGS**

### **13 AAC 67.290. ADMINISTRATIVE HEARINGS.**

- (a) Except as provided in (b) of this section the department will give notice and provide an opportunity for an administrative hearing before suspending, or revoking, a license.
- (b) If it is reasonably necessary to protect the health and safety of the public or to ensure the safekeeping of property, the department will, in its discretion, suspend or revoke a license before giving notice and providing an opportunity for a hearing. The department will provide an opportunity for a hearing following a license suspension or revocation under this subsection.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

### **13 AAC 67.300.APPOINTMENT OF HEARING OFFICER.**

The commissioner will assign a qualified, unbiased, and impartial hearing officer to conduct a hearing under this chapter. The hearing officer may not

- (1) have participated in making the decision that will be reviewed at the hearing; or
- (2) be an immediate supervisor or subordinate of the person who made the decision that will be reviewed at the hearing.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

### **13 AAC 67.310.ACCUSATION.**

To initiate a hearing to determine whether a license should be suspended or revoked, the department or an interested person must file an accusation. The accusation must conform to the requirements of AS 44.62.360.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

## **ARTICLE 7. GENERAL PROVISIONS**

### **13 AAC 67.900. ADDRESS AND TELEPHONE NUMBER.**

The latest mailing address and telephone number on file for an active or lapsed process server is the address the department will use for official communications, notifications, and service of legal process.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120* **CIVILIAN PROCESS SERVER REGULATIONS**



### **13 AAC 67.910. INFORMATION TO BE PROVIDED TO DEPARTMENT.**

- (a) If a process server changes the name, address, or telephone number under which the process server is licensed to do business, the process server shall immediately notify the department in writing of the new name, address, or telephone number.
- (b) If a process server will be unavailable to serve process for more than seven calendar days, the process server shall notify the department in writing of the dates the process server will be unavailable to serve process.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

### **13 AAC 67.920. BOND REQUIREMENTS.**

- (a) Except as provided in (c) and (d) of this section, an applicant for a process server license shall file with the department a surety bond evidencing liability coverage for fraud, misappropriation or commingling of funds, abuse of process, and malicious prosecution in the minimum amount of \$15,000. The bond must provide that it may not be canceled unless 30 days' notice of cancellation is given to the department.
- (b) The surety shall file with the department a power of attorney designating its attorney in fact for execution of the bond;
- (c) If a process serving firm employs four to seven process servers, the process serving firm may provide a single surety bond that covers each of those process servers, provided that the bond is in the minimum amount of \$60,000. A certificate of the bond must be filed with each employee's application for licensure.
- (d) If a process serving firm employs eight or more process servers, the process serving firm may provide a single surety bond that covers each of those process servers, provided that the bond is in the minimum amount of \$100,000. A certificate of the bond must be filed with each employee's application for license.
- (e) If a process server is removed from coverage by a firm's bond, the firm shall immediately notify the department in writing.
- (f) If a process server is not eligible to be covered by a firm's bond or is terminated due to a violation that is a cause for license revocation, this information must be included in the notification submitted under (e) of this section.
- (g) A process server who is no longer covered by a firm's bond or by the process server's own bond shall return his or her process server license to the department immediately upon termination of coverage. The license will be returned to the process server if the process server submits proof of obtaining the required bond and meets all other eligibility requirements. If a process server fails to submit proof of a new bond within 90 days of the date the process server's previous bond was terminated, the license will be revoked.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120***CIVILIAN PROCESS SERVER  
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### **13 AAC 67.930. RECORDKEEPING.**

(a) A process server shall maintain up-to-date records of all process that identify the

- (1) type of document received;
- (2) date the document was received;
- (3) disposition of the process;
- (4) date the process was returned; and
- (5) all fees collected and disbursed.

(b) Process records must be made available for inspection by members of the department at any reasonable time.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

### **13 AAC 67.940. ROSTER.**

The department will prepare on a regular basis a roster of all licensed servers.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

### **13 AAC 67.990.DEFINITIONS.**

Unless the context otherwise indicates, in this chapter

- (1) "commissioner" means the commissioner of the Department of Public Safety;
- (2) "department" means the Alaska Department of Public Safety;
- (3) "good moral character" means the absence of acts or conduct that would cause a reasonable person to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of the state and the nation; the following are indicative of a lack of good moral character:

(A) illegal conduct;

(B) conduct involving dishonesty, fraud, deceit, or misrepresentation, including misconduct in the licensing process;

(C) intentional deception or fraud or attempted deception or fraud in an application, examination, or other document needed for securing a license;

(D) conduct that adversely reflects on a person's fitness to perform as a process server, including intoxication while acting as a process server or a history of personal habits while not serving process that could affect the person's performance as a process server, such as excessive use of alcohol; **CIVILIAN PROCESS**

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- (4) "process server" means an individual residing in Alaska who is licensed by the commissioner to serve process within the state in accordance with the provisions of this chapter;
- (5) "proctor" means the person assigned by the department to administer the process server examination.

*(Eff. 11/11/92, Register 124)*

*AUTHORITY: AS 22.20.100, AS 22.20.110, AS 22.20.120*

## ARIZONA PROCESS SERVER REQUIREMENTS

Arizona has one of the nation's most elaborate system set up for the regulation of private process servers. Process servers must be appointed or registered by order of the Arizona State Supreme Court. See Ariz. Rev. Stat. § 11-445(I) (Private process servers duly appointed or registered pursuant to rules established by the supreme court may serve all process, writs, orders, pleadings or papers required or permitted by law to be served before, during or independently of a court action. . . .”).

A Supreme Court Order establishes and details the requirements of the private process server program. Id.; see also Ariz. Sup. Ct. Order No. 2002-110. The Administrative Director of the Administrative Office of the Courts oversees the Private Process Server Program, Ariz. Code Jud. Admin. §7-204(D)(1), and designates a Program Coordinator. §7-204(D)(2). The clerks of the superior court in each county administer the program requirements, including administering and grading examination. §7-204(D)(3).

Applicants must submit an application (which includes an affidavit), pass an examination, and pay a fee. Ariz. Code Jud. Admin. §7-204(E). Arizona statutes contain a detailed Code of Conduct for private process servers. Id. App. A. In addition, continuing education is required. Sup. Ct. Admin. Directive No. 2003-01 (requiring 10 hours every twelve months).

### **Appended Applicable Provisions:**

- Arizona Rule of Civil Procedure Rule 4(d) – process; by whom served
- Arizona Revised Statute § 11-445 – fees chargeable in civil actions by sheriffs, constables and private process servers
- Arizona – Study Guide for Private Process Server Certification Examination

Arizona Supreme Court, Administrative Office of the Courts, Certification and Licensing Division, Private Process Server Materials

**Arizona Rule of Civil Procedure Rule 4(d) – process; by whom served**

## ARIZONA RULES OF CIVIL PROCEDURE

### II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS; DUTIES OF COUNSEL

#### Ariz. R. Civ. P. 4

#### Rule 4. Process

(c) Summons; parties named fictitiously; return. When a pleading which requires service of a summons designates a party whose true name is unknown by a fictitious name pursuant to Rule 10(f) of these Rules, the summons may issue directed to the fictitious name employed for that purpose. The return of service of process upon a person designated therein by a fictitious name shall state the true name of the person or party upon whom it was served.

(d) Process; by whom served. Service of process shall be by a sheriff, a sheriffs deputy, a private process server registered with the clerk of the court pursuant to subpart (e) of this Rule, or any other person specially appointed by the court, except that a subpoena may be served as provided in Rule 45. Service of process may also be made by a party or that partys attorney where expressly authorized by these Rules. A private process server or specially appointed person shall be not less than twenty-one (21) years of age and shall not be a party, an attorney, or the employee of an attorney in the action whose process is being served. Special appointments to serve process shall be requested by motion to the presiding Superior Court judge and the motion shall be accompanied by a proposed form of order. The party submitting the proposed form of order shall comply with Rule 5(j)(2) under which the filing party includes the appropriate number of copies to be addressed to each party who has entered an appearance in the case and stamped, addressed envelopes for distribution of the resulting order, unless otherwise provided by the Presiding Judge. If the proposed form of order is signed, no minute entry shall issue. Special appointments shall be granted freely, are valid only for the cause specified in the motion, and do not constitute an appointment as a registered private process server.

(e) State-wide registration of private process servers. A person who files with the clerk of the court an application approved by the Supreme Court, stating that the applicant has been a bona fide resident of the State of Arizona for at least one year immediately preceding the application and that the applicant will well and faithfully serve process in accordance with the law, and who otherwise complies with the procedures set forth by the Supreme Court in its Administrative Order regarding this subsection, shall, upon approval of the court or presiding judge thereof, in the County where the application is filed, be registered with the clerk as a private process server until such approval is withdrawn by the court in its discretion. The clerk shall maintain a register for this purpose. Such private process server shall be entitled to serve in such capacity for any court of the state anywhere within the State.

**Arizona Revised Statute § 11-445 – fees chargeable in civil actions by sheriffs, constables  
and private process servers**

TITLE 11. COUNTIES  
CHAPTER 3. COUNTY OFFICERS  
ARTICLE 2. SHERIFF

A.R.S. § 11-445 (2008)

§ 11-445. Fees chargeable in civil actions by sheriffs, constables and private process servers; authority of private process servers; background investigation; constables' logs

A. The sheriff shall receive the following fees in civil actions:

1. For serving each true copy of the original summons in a civil suit, sixteen dollars, except that the sheriff shall not charge a fee for service of any document pursuant to section 13-3602 or any injunction against harassment pursuant to section 12-1809 if the court indicates the injunction arises out of a dating relationship.
2. For summoning each witness, sixteen dollars.
3. For levying and returning each writ of attachment or claim and delivery, forty-eight dollars.
4. For taking and approving each bond and returning it to the proper court when necessary, twelve dollars.
5. For endorsing the forfeiture of any bond required to be endorsed by him, twelve dollars.
6. For levying each execution, twenty-four dollars.
7. For returning each execution, sixteen dollars.
8. For executing and returning each writ of possession or restitution, forty-eight dollars plus a rate of forty dollars per hour per deputy or constable for the actual time spent in excess of three hours.
9. For posting the advertisement for sale under execution, or any order of sale, twelve dollars.
10. For posting or serving any notice, process, writ, order, pleading or paper required or permitted by law, not otherwise provided for, sixteen dollars except that posting for a writ of restitution shall not exceed ten dollars.
11. For executing a deed to each purchaser of real property under execution or order of sale, twenty-four dollars.



12. For executing a bill of sale to each purchaser of real and personal property under an execution or order of sale, when demanded by the purchaser, sixteen dollars.

13. For services in designating a homestead or other exempt property, twelve dollars.

14. For receiving and paying money on redemption and issuing a certificate of redemption, twenty-four dollars.

15. For serving and returning each writ of garnishment and related papers, forty dollars.

16. For the preparation, including notarization, of each affidavit of service or other document pertaining to service, eight dollars.

17. For every writ served on behalf of a justice of the peace, a fee established by the board of supervisors not to exceed five dollars per writ. Monies collected from the writ fees shall be deposited in the constable ethics standards and training fund established by section 22-138.

B. The sheriff shall also collect the appropriate recording fees if applicable and other appropriate disbursements.

C. The sheriff may charge:

1. Fifty-six dollars plus disbursements for any skip tracing services performed.

2. A reasonable fee for executing a civil arrest warrant ordered pursuant to court rule by a judge or justice of the peace. The fee shall only be charged to the party requesting the issuance of the civil arrest warrant.

3. A reasonable fee for storing personal property levied on pursuant to title 12, chapter 9.

D. For traveling to serve or on each attempt to serve civil process, writs, orders, pleadings or papers, the sheriff shall receive two dollars forty cents for each mile actually and necessarily traveled but, in any event, not to exceed two hundred miles, nor to be less than sixteen dollars. Mileage shall be charged one way only. For service made or attempted at the same time and place, regardless of the number of parties or the number of papers so served or attempted, only one charge for travel fees shall be made for such service or attempted service.

E. For collecting money on an execution when it is made by sale, the sheriff and the constable shall receive eight dollars for each one hundred dollars or major portion thereof not to exceed a total of two thousand dollars, but when money is collected by the sheriff without a sale, only one-half of such fee shall be allowed. When satisfaction or partial satisfaction of a judgment is received by the judgment creditor after the sheriff or constable has received an execution on the judgment, the commission is due the sheriff or constable and is established by an affidavit of the judgment creditor filed with the officer. If the affidavit is not lodged with the officer within thirty days of the request, the commission shall be based on the total amount of judgment due as billed by the officer and may be collected as any other debt by that officer.

F. The sheriff shall be allowed for all process issued from the supreme court and served by the sheriff the same fees as are allowed the sheriff for similar services on process issued from the superior court.

G. The constable shall receive the same fees as the sheriff for performing the same services in civil actions, except that mileage shall be computed from the office of the justice of the peace originating the civil action to the place of service.

H. Notwithstanding subsection G of this section, in a county with a population of more than three million persons, if an office of a justice of the peace is located outside of the precinct boundaries, the mileage for a constable shall be calculated pursuant to subsection D of this section, except that the distance between the precinct boundaries and the office of the justice of the peace, as determined by the county and certified by the board of supervisors of that county, shall be subtracted from the mileage calculation. This certified mileage calculation shall be transmitted to the justice courts and the clerks of those courts shall calculate the mileage between the office of the justice of the peace and the location where the civil process, writ, order, pleading or paper was served and reduce the mileage used to calculate the mileage fee according to the certified mileage calculation for that respective jurisdiction.

**I. Private process servers duly appointed or registered pursuant to rules established by the supreme court may serve all process, writs, orders, pleadings or papers required or permitted by law to be served before, during or independently of a court action, including all such as are required or permitted to be served by a sheriff or constable, except writs or orders requiring the service officer to sell, deliver or take into the officer's custody persons or property, or as may otherwise be limited by rule established by the supreme court. A private process server is an officer of the court. As a condition of registration, the supreme court shall require each private process server applicant to furnish a full set of fingerprints to enable a criminal background investigation to be conducted to determine the suitability of the applicant. The completed applicant fingerprint card shall be submitted with the fee prescribed in section 41-1750 to the department of public safety. The applicant shall bear the cost of obtaining the applicant's criminal history record information. The cost shall not exceed the actual cost of obtaining the applicant's criminal history record information. Applicant criminal history records checks shall be conducted pursuant to section 41-1750 and Public Law 92-544. The department of public safety is authorized to exchange the submitted applicant fingerprint card information with the federal bureau of investigation for a federal criminal records check. A private process server may charge such fees for services as may be agreed on between the process server and the party engaging the process server.**

J. Constables shall maintain a log of work related activities including a listing of all processes served and the number of processes attempted to be served by case number, the names of the plaintiffs and defendants, the names and addresses of the persons to be served except as otherwise precluded by law, the date of process and the daily mileage.

K. The log maintained in subsection I of this section is a public record and shall be made available by the constable at the constable's office during regular office hours. Copies of the log shall be filed monthly with the clerk of the justice court and with the clerk of the board of supervisors.

HISTORY: Laws 2001, Ch. 4, § 2; Laws 2001, Ch. 307, § 1; Laws 2002, Ch. 323, § 1; Laws 2006, Ch. 280, § 1; Laws 2007, Ch. 143, § 1.

**Arizona – Study Guide for Private Process Server Certification Examination**

## **STUDY GUIDE FOR PRIVATE PROCESS SERVER CERTIFICATION EXAMINATION**

It is strongly recommended you spend time with an attorney or at the law library to acquaint yourself with state laws

(Arizona Revised Statutes A.R.S.), Arizona Rules of Court, Rules of Civil Procedure (RcP) and local (individual

county) court rules. Information contained in this packet should be considered a guide and is not intended to be a

complete listing of all laws and rules a private process server would need to know. Selected information, for example,


the Administrative Order and Arizona Code of Judicial Administration are posted on the Arizona Judicial Branch

Website at [www.supreme.state.az.us/cld.pps.htm](http://www.supreme.state.az.us/cld.pps.htm) and the Arizona Rules of Court at [www.supreme.state.az.us/rules/](http://www.supreme.state.az.us/rules/)

### **READ:**

 Administrative Order 2002-110

 Arizona Code of Judicial Administration ' 7-204: Private Process Server


 The local court rules for each county where you intend to or may be employed to serve papers.


 A.R.S. ' 10-501 - Known Place of Business and Statutory Agent


 A.R.S. ' 10-504 - Service upon Corporation

 A.R.S. ' 11-445 - Fees Chargeable in Civil Actions by Private Process Servers, Authority of Private

Process Servers; Background Investigations

 A.R.S. ' 11-447 - Service of Process Regular on its Face

 A.R.S. ' 11-448 - Duty to Show Process


 A.R.S. ' 12-303 - Witness Fees and Mileage. Arizona Rules of Civil Procedure (RcP), Rule 45,

states that for service of a subpoena, unless issued by state, to be complete, witness and mileage fees


As allowed by law@ must be tendered but reference to ' 12-303 is necessary to determine what that


amount is.


 A.R.S. ' 12-1175(c) - Complaint and Answer; Service and Return


 A.R.S. ' 12-2282 - Compliance with Subpoena Duces Tecum for Health Care Provider; Issuance of

Subpoena; Notice; Exception


 A.R.S. ' 13-1501, ' 13-1502, ' 13-1503, and ' 13-1504 - Criminal Trespass

 A.R.S. ' 13-2810 - Interfering with Judicial Proceedings; Classification

 A.R.S. ' 13-2814 - Stimulating Legal Process; Classification

 A.R.S. ' 13-3802 - Right to Command Aid for Execution of Process; Punishment for Resisting

Process

 A.R.S. ' 13-4072 - Service of Subpoena

- 📄 A.R.S. ' 13-4093 - Witness from Another State Summoned to Testify in this State
- 📄 A.R.S. ' 13-4094 - Exemption from Arrest and Service of Process
- 📄 A.R.S. ' 33-1377 - Service of Special Detainer Actions
- 📄 A.R.S. ' 39-121 - Inspection of Public Records [useful in locating defendants for service]
- 📄 RcP, Rule 3 - Commencement of Action
- 📄 RcP, Rule 4 - Process
- 📄 RcP, Rule 4.1 - Service of Process Within Arizona
- 📄 RcP, Rule 5 - Service and Filing of Pleadings and Other Papers [entire rule, but especially 5(c)2]
- 📄 RcP, Rule 6 - Time [timeliness of service]; 6(d) governs service of orders to show cause
- 📄 RcP, Rule 10 - Form of Pleading [sets out size of paper, margins and other technicalities for preparing pleadings]
- 📄 RcP, Rule 45 – Subpoena
- *Tolelson v. Haines*, 2 Ariz.App. 127, 406 P.2d 845, Ariz. App. (1965)
- *Hatmaker v. Hatmaker*, 337 Ill.App. 175, 85 N.E. 2d 345 (1949)
- *In re Ball*, 2 Cal.App.2d 578, 38 P.2d 411 (1934)
- *Thorndyke v. Jenkins*, 61 Cal.App.2d 119, 142 P.2d 348 (1943)
- *Trujillo v. Trujillo*, 71 Cal.App.2d 257, 162 P.2d 640 (1945)
- *Lane v. Elco*, 134 Ariz. 361, 656 P.2d 650 (1982)
- *Endischiee v. Endischiee*, 141 Ariz. 77, 685 P.2d 142 (1984)
- *Enriquez v. State*, 115 Ariz. 342, 565 P.2d 522 (1997)
- *Francisco v. State*, 113 Ariz. 427, 556 P.2d 1 (1976)
- *Marsh v. Hawkins*, 7 Ariz.App. 226, 437 P.2d 978, 31 A.L.R.3d 1383 (1968)

**Arizona Supreme Court, Administrative Office of the Courts, Certification and Licensing  
Division, Private Process Server Materials**

**See** [www.supreme.state.az.us/cld/pdf/ACJA7-204.pdf](http://www.supreme.state.az.us/cld/pdf/ACJA7-204.pdf) -

## ARKANSAS PROCESS SERVER REQUIREMENTS

An Arkansas Supreme Court Order governs the regulation of private process servers in Arkansas. The Order requires appointment of private process servers by the administrative judge of a judicial district or any judge of a circuit court designated by the administrative judge. Ar. Sup. Ct. Admin. Order 20. The Order also sets out minimum qualifications, see Order 20(b), including:

- “(1) be not less than eighteen years old and a citizen of the United States;
- (2) have a high school diploma or equivalent;
- (3) not have been convicted of a crime punishable by imprisonment for more than one year or a crime involving dishonesty or false statement, regardless of the punishment;
- (4) hold a valid Arkansas driver's license; and
- (5) demonstrate familiarity with the various documents to be served. Each judicial district may, with the concurrence of all the circuit judges in that district, prescribe additional qualifications.

Id. See appended pages for forms used by the courts.

Administrative Order Number 20 was adopted in 2007 and amended in December of 2008. This provision seeks to institute some uniformity in the appointment of private process servers as some courts had more elaborate requirements and procedures than others.<sup>3</sup>

Under Arkansas’ Rule 4(c) of the Civil Rules of Procedure, service of summons shall be made by a sheriff or his or her deputy, persons appointed pursuant to Administrative Order Number 20, or by any person authorized to serve process under the law of the place outside the state where service is made.<sup>4</sup>

### **Appended Applicable Provisions:**

- Arkansas Supreme Court Order Number 20 – private civil process server appointment, qualifications

### **Appended Materials:**

- Application for Appointment and Authorization to Serve Legal Process
- Affidavit of Applicant
- Order of Appointment as Process Server

Application for Renewal of Appointment and Authorization to Serve Legal Process

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<sup>3</sup> Interview with Larry Brady, Court Services Director, Administrative Office of the Courts (Apr. 9, 2009).

<sup>4</sup> Arkansas Rule of Civil Procedure 4(c) provides as follows:

(c) By Whom Served Service of summons shall be made by (1) a sheriff of the county where the service is to be made, or his or her deputy, unless the sheriff is a party to the action; (2) any person appointed pursuant to Administrative Order No. 20 for the purpose of serving summons by either the court in which the action is filed or a court in the county in which service is to be made; (3) any person authorized to serve process under the law of the place outside this state where service is made; or (4) in the event of service by mail or commercial delivery company pursuant to subdivision (d)(8) of this rule, by the plaintiff or an attorney of record for the plaintiff.



**Arkansas Supreme Court Order Number 20 – private civil process server appointment,  
qualifications**

*AR Sup. Ct. Adm. Order No. 20*

Arkansas Code of 1987 Annotated Official Edition Court Rules 2008  
1987-2008 by the State of Arkansas  
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\*\*\* THIS DOCUMENT IS CURRENT THROUGH MARCH 21, 2008 \*\*\*  
\*\*\* Annotations current through January 10, 2008 \*\*\*

ADMINISTRATIVE ORDERS OF THE SUPREME COURT  
ADMINISTRATIVE ORDER NUMBER 20 - PRIVATE CIVIL PROCESS SERVERS APPOINTMENT -  
QUALIFICATIONS

AR Sup. Ct. Adm. Order No. 20 (2008)

Review Court Orders which may amend this Rule

Administrative Order Number 20 - Private Civil Process Servers Appointment - Qualifications

(a) Authority to Appoint Persons to Serve Process in Civil Cases     The administrative judge of a judicial district, or any circuit judge(s) designated by the administrative judge, may issue an order appointing an individual to make service of process pursuant to Arkansas Rule of Civil Procedure 4(c)(2) in each county of the district wherein approval has been granted. The appointment shall be effective for every division of circuit court in the county.

(b) Minimum Qualifications to Serve Process     Each person appointed to serve process must have these minimum qualifications:

(1) be not less than eighteen years old and a citizen of the United States;

(2) have a high school diploma or equivalent;

(3) not have been convicted of a crime punishable by imprisonment for more than one year or a crime involving dishonesty or false statement, regardless of the punishment;

(4) hold a valid Arkansas driver's license; and

(5) demonstrate familiarity with the various documents to be served.     Each judicial district may, with the concurrence of all the circuit judges in that district, prescribe additional qualifications.

(c) Appointment Procedure

(1) A person seeking court appointment to serve process shall file an application with the circuit clerk. The application shall be accompanied by an affidavit stating the applicant's name, address, occupation, and employer, and establishing the applicant's minimum qualifications pursuant to section (b) of this Administrative Order.

(2) The judge shall determine from the application and affidavit, and from whatever other inquiry is needed, whether the applicant meets the minimum qualifications prescribed by this Administrative Order and any additional qualifications prescribed in that district. If the

judge determines that the applicant is qualified, then the judge shall issue an order of appointment. The circuit clerk shall file the order, and provide a certified copy of it to the process server and to the sheriff of the county in which the person will serve process. The circuit clerk of each county shall maintain and post a list of appointed civil process servers.

(d) Identification Each process server shall carry a certified copy of his or her order of appointment, and a Arkansas driver's license, when serving process. He or she shall, upon request or inquiry, present this identification at the time service is made.

(e) Duration, Renewal, and Revocation A judge shall appoint process servers for a fixed term not to exceed three years. Appointments shall be renewable for additional three-year terms. A process server seeking a renewal appointment shall file an application for renewal and supporting affidavit demonstrating that he or she meets the minimum qualifications prescribed by this Administrative Order and the judicial district. Upon notice to the administrative judge, any circuit judge may revoke an appointment to serve process for his or her division for any of the following reasons: (1) making a false return of service; (2) serious and purposeful improper service of process; (3) failing to meet the minimum qualifications for serving process; (4) misrepresentation of authority, position, or duty; or (5) other good cause.

(f) Forms Forms for the application, affidavit, order of appointment, and renewal of appointment are available at the Administrative Office of the Courts section of the Arkansas Judiciary website, <http://courts.state.ar.us> .

**HISTORY:** (Added March 1, 2008)

**NOTES:**

Explanatory Note:

This new Administrative Order imposes expanded minimum qualifications for private process servers in civil cases. Arkansas Rule of Civil Procedure 4(c)(2) formerly provided that the circuit court could appoint any person more than eighteen years old to serve process. Given the importance and effect of service of process, that qualification is insufficient. The expanded minimum qualifications imposed by this Administrative Order will help ensure the competence and character of private process servers. The Order establishes a floor, not a ceiling: the circuit judges in each judicial district may establish additional qualifications. Rule 4(c)(2) has been amended to incorporate this Order by reference. The Order also creates a uniform procedure for appointment and reappointment by the circuit court, as well as giving examples of the good cause which would justify revocation of the privilege of serving process. Finally, the Order requires process servers to carry a certified copy of their order of appointment, and their driver's license, to establish the server's legal authority.

**Application for Appointment and Authorization to Serve Legal Process**

**IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, ARKANSAS**  
**NUMBER \_\_\_\_\_**  
**IN THE MATTER**  
**OF APPOINTMENT OF \_\_\_\_\_**  
**TO SERVE LEGAL PROCESS**  
**APPLICATION FOR APPOINTMENT AND AUTHORIZATION TO**  
**SERVE LEGAL PROCESS**

Comes now \_\_\_\_\_, and petitions the court for an order of appointment as civil process server in accordance with Rule 4(c)(2), Arkansas Rules of Civil Procedure, and Administrative Order Number 20, and states:

1. Applicant seeks appointment to serve process in \_\_\_\_\_ Count[y] [ies], Arkansas and as established by affidavit satisfies the minimum qualifications:

(A) is eighteen years of age or older and a citizen of the United States;

(B) has a high school diploma or equivalent;

(C) has not been convicted of a crime punishable by imprisonment for more than one year or a crime involving dishonesty or false statement, regardless of the punishment;

(D) holds a valid driver's license from one of the United States;

[(E) Any additional qualifications of judicial circuit]

2. Applicant certifies that [he/she] is familiar with the provisions of Rules 4, 5 and 45 of the Arkansas Rules of Civil Procedure and applicable Arkansas law and with the various documents to

be served; that [he/she] will carry a certified copy of his or her order of appointment, and a valid driver's license, when serving process, and will upon request or inquiry, present this identification

at the time service is made.

3. Applicant is a resident of \_\_\_\_\_, \_\_\_\_\_ County, Arkansas with a mailing address of: \_\_\_\_\_.

WHEREFORE, Applicant prays that this Application be granted and that the Court enter an Order authorizing service of civil process in \_\_\_\_\_, Count[y][ies] Arkansas.

\_\_\_\_\_  
Applicant  
STATE OF ARKANSAS )  
COUNTY OF \_\_\_\_\_)

I state on oath that I have read the foregoing Application and that the statements contained therein are true and correct to the best of my present knowledge and belief.

\_\_\_\_\_  
Applicant  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**Affidavit of Applicant**

**IN THE CIRCUIT COURT OF \_\_\_\_\_ , ARKANSAS**  
**NUMBER \_\_\_\_\_**  
**IN THE MATTER OF THE APPOINTMENT OF \_\_\_\_\_**  
**TO SERVE LEGAL PROCESS**  
**AFFIDAVIT OF APPLICANT**

Comes now, \_\_\_\_\_, the Applicant, and being first duly sworn, upon his/her oath deposes and says:

1. I am a resident \_\_\_\_\_, \_\_\_\_\_ County, Arkansas, and my address is \_\_\_\_\_.
2. My occupation is \_\_\_\_\_, and I am employed by \_\_\_\_\_, whose address is \_\_\_\_\_.
3. I have filed an application requesting [renewal of] approval from the Circuit Court of \_\_\_\_\_ County to serve process in accordance with the Rules of Civil Procedure and the laws of the State of Arkansas. [ Applicant was appointed to serve legal process in \_\_\_\_\_ Count[y][ies] \_\_\_\_\_ by order of the circuit court dated \_\_\_\_\_, a copy of which is attached hereto as Exhibit A.]
4. In support of the Application, Applicant states that I meet the minimum qualifications to serve process:
  - (A) I am eighteen years of age or older and a citizen of the United States.
  - (B) I have a high school diploma or equivalent.
  - (C) I have not been convicted of a crime punishable by imprisonment for more than one year or a crime involving dishonesty or false statement, regardless of the punishment.
  - (D) I hold a valid driver's license from one of the United States.
  - [(F) Any additional qualifications of the judicial circuit]
5. I am familiar with, and have read and understand, Rules 4, 5, and 45 of the Rules of Civil Procedure and represent to the Court that I am familiar with the requirements of the service of civil process in the State of Arkansas and with the various documents to be served. I will comply with the requirements set forth in those rules and the orders of the court. I further state that I will endeavor to stay current with any changes to the law concerning the service of process as well as the Rules of Civil Procedure pertaining thereto.
6. I will carry a certified copy of my order of appointment, and a valid driver's license, when serving process and will, upon request or inquiry, present this identification at the time service is made.

**FURTHER AFFIANT SAYETH NOT.**

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Address

STATE OF ARKANSAS                    )  
COUNTY OF \_\_\_\_\_)

Subscribed and sworn to or affirmed before me this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_.

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

My Commission Expires:  
\_\_\_\_\_



**Order of Appointment as Process Server**

**IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, ARKANSAS**  
**NUMBER \_\_\_\_\_**  
**IN THE MATTER OF THE APPOINTMENT OF \_\_\_\_\_**  
**TO SERVE LEGAL PROCESS**  
**ORDER OF APPOINTMENT AS PROCESS SERVER**

Pursuant to Rule 4 (c)(2), Arkansas Rules of Civil Procedure, and Administrative Order Number 20, after reviewing the application, affidavit, and other information submitted by Applicant

for appointment to serve legal process in \_\_\_\_\_ Count[y][ies], Arkansas, the court

finds as follows:

That the application should be, and hereby is, approved; this appointment is effective for \_\_\_\_\_ years, until 12:00 Midnight, \_\_\_\_\_, 2\_\_\_\_, unless terminated earlier by court order.

Name of Process Server: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Count[y][ies] in which  
authorized to serve process: \_\_\_\_\_

This appointment is effective for every division of circuit court and for every district court in said count[y][ies].

The circuit clerk shall file this order and provide a certified copy of it to the process server, and the circuit clerk and sheriff of each county of this judicial circuit wherein approval has been granted. The circuit clerk(s) shall add the Applicant to the list of qualified process servers that it maintains and posts.

The process server shall carry a certified copy of this order of appointment and a valid driver's license, when serving process and shall, upon request or inquiry, present this identification at the time service is made.

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

\_\_\_\_\_  
Circuit Judge

**Application for Renewal of Appointment and Authorization to Serve Legal Process**

**IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, ARKANSAS**  
**NUMBER \_\_\_\_\_**  
**IN THE MATTER OF THE RENEWAL**  
**OF APPOINTMENT OF \_\_\_\_\_**  
**TO SERVE LEGAL PROCESS**  
**APPLICATION FOR RENEWAL OF APPOINTMENT AND AUTHORIZATION TO**  
**SERVE LEGAL PROCESS**

Comes now \_\_\_\_\_, and petitions the court for an Order of renewal of appointment as civil process server in accordance with Administrative Order Number 20 and Rule

4(c)(2), Arkansas Rules of Civil Procedure, and states:

1. Applicant was appointed to serve legal process in \_\_\_\_\_ Count[y][ies], Arkansas by order of the court dated \_\_\_\_\_, a copy of which is attached hereto as Exhibit A.

2. Applicant seeks a renewal of this appointment and files this application and a supporting affidavit. The affidavit establishes that Applicant meets the minimum qualifications to serve process:

(A) is eighteen years of age or older and a citizen of the United States;

(B) has a high school diploma or equivalent;

(C) has not been convicted of a crime punishable by imprisonment for more than one year or a crime involving dishonesty or false statement, regardless of the punishment;

(D) has a valid driver's license from one of the United States;

*[(E) Any additional qualifications of judicial circuit]*

(3) Applicant certifies that [he/she] is familiar with the provisions of Rules 4, 5 and 45 of the Arkansas Rules of Civil Procedure and applicable Arkansas law and with the various documents

to be served; that [he/she] will carry a certified copy of his or her order of appointment, and a valid

driver's license, when serving process, and will upon request or inquiry, present this identification

at the time service is made.

4. Applicant is a resident of \_\_\_\_\_, \_\_\_\_\_ County, Arkansas with a mailing address of: \_\_\_\_\_.

WHEREFORE, Applicant prays that this Application be granted and that the court enter an Order renewing authorization of Applicant to serve civil process in \_\_\_\_\_, Count[y][ies] Arkansas.

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Applicant

STATE OF ARKANSAS                    )  
COUNTY OF \_\_\_\_\_)

I state on oath that I have read the foregoing Application and that the statements contained therein are true and correct to the best of my present knowledge and belief.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

My Commission Expires: \_\_\_\_\_

## CALIFORNIA PROCESS SERVER REQUIREMENTS

California does not require training, education or licensing for civil process servers.<sup>5</sup> The state, however, does require registration of individuals who serve more than 10 services of process within the state in one year for compensation. Cal. Bus. & Prof. Code § 22350. Process servers register with the county clerk of the county in which they reside or have their principal place of business. Id. Process server organizations must also register. Id.

Registration requirements vary from county to county but completion of the registration process enables one to serve process throughout the state of California. Generally, counties require applicants to obtain a bond and to get fingerprinted for felony background checks. For example, the county of Yolo requires applicants to obtain a bond of two thousand dollars. See County of Yolo, State of California, Certificate of Registration as a Process Server. The registration is effective for two years. Id.

### **Appended Applicable Provisions:**

- Cal Bus. & Prof. Code § 22350 (2008)
- County of Yolo, State of California, Certificate of Registration as a Process Server

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<sup>5</sup> Patrick O'Donnell, Office of General Counsel, Administrative Office of the Courts, State of California (Apr. 6, 2009) (confirming that courts are not involved in the training of process servers).

**CALIFORNIA BUSINESS AND PROFESSIONAL CODE**  
**§ 22350**

**§ 22350. Required registration as process server; Exemptions**

(a) Any natural person who makes more than 10 services of process within this state during one calendar year, for specific compensation or in expectation of specific compensation, where that compensation is directly attributable to the service of process, shall file and maintain a verified certificate of registration as a process server with the county clerk of the county in which he or she resides or has his or her principal place of business. Any corporation or partnership that derives or expects to derive compensation from service of process within this state shall also file and maintain a verified certificate of registration as a process server with the county clerk of the county in which the corporation or partnership has its principal place of business.

(b) This chapter shall not apply to any of the following:

(1) Any sheriff, marshal, or government employee who is acting within the course and scope of his or her employment.

(2) An attorney or his or her employees, when serving process related to cases for which the attorney is providing legal services.

(3) Any person who is specially appointed by a court to serve its process.

(4) A licensed private investigator or his or her employees.

(5) A professional photocopier registered under Section 22450, or an employee thereof, whose only service of process relates to subpoenas for the production of records, which subpoenas specify that the records be copied by that registered professional photocopier.



**County of Yolo, State of California**  
**Certificate of Registration as a Process Server**

(File Stamp)

**State of California**

**County of Yolo**

Term of Registration: 2 years

(see reverse for more information)

**CERTIFICATE of REGISTRATION as a PROCESS SERVER**

**Corporation or Partnership**

(Business & Professions Code Section 22350, 22351(a))

(check one) New Registration ☐ Renewal Registration ☐

The undersigned declare

that \_\_\_\_\_

\_\_\_\_\_

(Name of Corporation or Partnership)

is a \_\_\_\_\_ corporation partnership

(State of incorporation)

Registration in the County of Yolo is proper because the principal place of business is located in this county at:

Physical Address City St Zip

Have any general partners or officers been convicted of a felony.

(A felony conviction will cause this application to be denied.) YES NO

The corporation or partnership has been organized and existing continuously for a period of one year immediately preceding the filing of the certificate or a responsible managing employee, partner or officer has been previously registered. YES NO

The corporation or partnership will perform its duties as a process server in compliance with the provisions of law governing the service of process in this state. YES NO

Each of the undersigned declare(s) under penalty of perjury that the foregoing is true and correct except for the personal information contained herein; and, as to that personal information, each declares under penalty of perjury that personal information is true and correct only to the extent that it applies to him / her. (*Attach page(s) for additional partners or corporate officers, if necessary.*)

Name / Title \_\_\_\_\_ Age \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_ Signature \_\_\_\_\_

Name / Title \_\_\_\_\_ Age \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_ Signature \_\_\_\_\_

Name / Title \_\_\_\_\_ Age \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_ Signature \_\_\_\_\_

Name / Title \_\_\_\_\_ Age \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_ Signature \_\_\_\_\_

Office Use Only: Registration # \_\_\_\_\_ Expiration Date \_\_\_\_\_ #ID Cards Issued \_\_\_\_\_

Document # (Bond) \_\_\_\_\_ Recorded Date \_\_\_\_\_ Initials \_\_\_\_\_

## **WHO MUST REGISTER as a PROCESS SERVER**

(Business & Professions Code, Section 22350)

Any corporation or partnership that derives or expects to derive compensation from service of process within this state shall file and maintain a verified certificate of registration as a process server with the county clerk of the county in which the corporation or partnership has its principal place of business.

A corporate officer or general partner who personally makes more than 10 serves within a year in this State must file as an Individual Process Server, in addition to a corporation or general partnership registration..

Employees of a corporation or partnership do not register with the county clerk, except if an employee serves process 10 or more times in a year for their own compensation. In this case, the person would file as an Individual Process Server.

A certificate of registration of a registrant who is a corporation or a partnership shall contain the names, ages, addresses and telephone numbers of the general partners or officers.

### **BOND REQUIREMENTS** (B&P 22853)

A certificate of registration shall be accompanied by a bond of two thousand dollars (\$2,000), which is executed by an admitted surety insurer and conditioned upon compliance with the provisions of this chapter and all laws governing the service of process in this state. The total aggregate liability on the bond is limited to \$2,000.

### **FILING FEES** (B&P 22352)

The registrant shall pay the following fees to the county clerk:

- (a) Registration filing fee - \$100
- (b) Permanent ID card fee - \$10 per card (no photo allowed on corporate/partnership ID's)
- (c) Bond recording fee - \$8 first page, \$3 ea. addtl page

### **TERM OF REGISTRATION** (B&P 22354)

A certificate of registration is effective for two years from the filing date or until the date the bond expires, whichever occurs first. Thereafter, a registrant shall file a new certificate of registration and pay the fees required in Section 22352. A certificate of registration may be renewed up to 60 days prior to its expiration date and the effective date of the renewal shall be the date the current registration expires. The renewal will be effective for a period of two (2) years from the effective date or until the expiration date of the bond, whichever occurs first.

A certificate of registration may be revoked under the provisions of Sections 22351.5 (b), 22357 and 22358 of the Business & Professions Code.

corp/partner

## **COLORADO PROCESS SERVER REQUIREMENTS**

Colorado does not have any education or registration requirements for private process servers.

Colorado Rule of Civil Procedure 4(d) provides as follows:

(d) By Whom Served. Process may be served within the United States or its Territories by any person whose age is eighteen years or older, not a party to the action. Process served in a foreign country shall be according to any internationally agreed means reasonably calculated to give notice, the law of the foreign country, or as directed by the foreign authority or the court if not otherwise prohibited by international agreement.

### **Appended Applicable Provisions:**

- Colorado Rule of Civil Procedure 4(d)

**Colorado Rule of Civil Procedure 4(d)**

COLORADO RULES OF CIVIL PROCEDURE  
CHAPTER 1 SCOPE OF RULES, ONE FORM OF ACTION, COMMENCEMENT OF ACTION, SERVICE OF  
PROCESS, PLEADINGS, MOTIONS AND ORDERS

C.R.C.P. 4 (2009)

Rule 4. Process.

(a) To What Applicable. This Rule applies to all process except as otherwise provided by these rules.

(b) Issuance of Summons by Attorney or Clerk. The summons may be signed and issued by the clerk, under the seal of the court, or it may be signed and issued by the attorney for the plaintiff. Separate additional or amended summons may issue against any defendant at any time. All other process shall be issued by the clerk, except as otherwise provided in these rules.

(c) Contents of Summons. The summons shall contain the name of the court, the county in which the action is brought, the names or designation of the parties, shall be directed to the defendant, shall state the time within which the defendant is required to appear and defend against the claims of the complaint, and shall notify the defendant that in case of the defendant's failure to do so, judgment by default may be rendered against the defendant. If the summons is served by publication, the summons shall briefly state the sum of money or other relief demanded. The summons shall contain the name, address, and registration number of the plaintiff's attorney, if any, and if none, the address of the plaintiff. Except in case of service by publication under Rule 4(g) or when otherwise ordered by the court, the complaint shall be served with the summons. In any case, where by special order personal service of summons is allowed without the complaint, a copy of the order shall be served with the summons.

**(d) By Whom Served. Process may be served within the United States or its Territories by any person whose age is eighteen years or older, not a party to the action. Process served in a foreign country shall be according to any internationally agreed means reasonably calculated to give notice, the law of the foreign country, or as directed by the foreign authority or the court if not otherwise prohibited by international agreement.**

## CONNECTICUT PROCESS SERVER REQUIREMENTS

In Connecticut, state statutes as a general rule prescribe civil service of process to state marshals, constables, or “other proper officer[s] authorized by statute.” Conn. Gen. Stat. § 52-50(a).

A State Marshal Commission is established by state statute. Conn. Gen. Stat. § 6-38b. State law mandates that the State Marshal Commission “establish professional standards, including training requirements and minimum fees for execution and service of process.” § 6-38b(f). State regulations detail the qualifications of state marshals, Conn. Agencies Regs. § 6-38b-1, the application process, § 6-38b-2, the examination they must take, § 6-38b-3, and, training that they must attend. § 6-38b-4. The regulations also contain “standards of conduct” for state marshals. § 6-38b-6.

We spoke with the James E. Neil, Director of Operations for the Connecticut State Marshal Commission.<sup>6</sup> Mr. Neil confirmed that civil process of service is primarily conducted by state marshals. Mr. Neil added that state marshals must take an examination, which covers civil services of process, and then attend training that covers this topic prior to their appointment. Following their appointment, continuing education on service of process is not required; however, Mr. Neil added that from time to time marshals organize their own training on developments in this area.

### **Appended Applicable Provisions:**

- Connecticut General Statute § 52-50 – persons to whom process shall be directed
- Connecticut General Statute § 52-50 – state marshal may make special deputation
- Connecticut General Statute § 52-261 – fees and expenses of officers and persons serving process or performing other duties
- Connecticut General Statute § 6-32 – duties (of state marshals)
- Connecticut General Statute § 6-38a – state marshal. Authority to provide legal execution and service of process
- Connecticut General Statute § 6-38b – State Marshal Commission. Members. Regulations. Duties. Appointment of state marshal to fill vacancy.
- Connecticut General Statute § 6-38e – review and audit of records and accounts of state marshals by State Marshal Commission
- Connecticut General Statute § 6-38f – State Marshal Commission to appoint state marshals.
- Connecticut General Statute § 6-38h – political contribution to appointing authority for State Marshal Commission affects eligibility for appointment as state marshal.
- Connecticut General Statute § 6-38m – annual fee to State Marshal Commission
- Connecticut Agencies Regs. § 6-38b-1 – qualifications
- Connecticut Agencies Regs. § 6-38b-2 – application
- Connecticut Agencies Regs. § 6-38b-3 – examination
- Connecticut Agencies Regs. § 6-38b-4 – training
- Connecticut Agencies Regs. § 6-38b-5 – appointment

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<sup>6</sup> Interview with James E. Neil, Director of Operations, Connecticut State Marshal Commission (Apr. 13, 2009).

- Connecticut Agencies Regs. § 6-38b-6 – standards of conduct
- Connecticut Agencies Regs. § 6-38b-7 – investigations
- Connecticut Agencies Regs. § 6-38b-8 – disciplinary actions
- Connecticut Agencies Regs. § 6-38b-9 – hearing procedure
- Connecticut Agencies Regs. § 6-38b-10 – minimum fees for service of process and execution



**Connecticut General Statute § 52-50 – persons to whom process shall be directed**

§ 52-50. Persons to whom process shall be directed.

(a) All process shall be directed to a state marshal, a constable or other proper officer authorized by statute, or, subject to the provisions of subsection (b) of this section, to an indifferent person. A direction on the process "to any proper officer" shall be sufficient to direct the process to a state marshal, constable or other proper officer.

(b) Process shall not be directed to an indifferent person unless more defendants than one are named in the process and are described to reside in different counties in the state, or unless, in case of a writ of attachment, the plaintiff or one of the plaintiffs, or his or their agent or attorney, makes oath before the authority signing the writ that the affiant truly believes the plaintiff is in danger of losing his debt or demand unless an indifferent person is deputed for the immediate service of the writ or other process. The authority signing the writ shall certify on the writ that he administered the oath and insert in the writ the name of the person to whom it is directed, but he need not insert the reason for such direction. Any process directed to an indifferent person by reason of such an affidavit shall be abatable on proof that the party making the affidavit did not have reasonable grounds, at the time of making it, for believing the statements in the affidavit to be true.

(c) Service of motions for modification, motions for contempt and wage withholdings in any matter involving a beneficiary of care or assistance from the state and in other IV-D child support cases may be made by any investigator employed by the Commissioner of Administrative Services or the Commissioner of Social Services.

(d) Service of motions for modification, motions for contempt and wage withholdings in any matter involving child support, including, but not limited to, petitions for support authorized under sections 17b-745 and 46b-215, and those matters involving a beneficiary of care or assistance from the state, may be made by a support enforcement officer or support services investigator of the Superior Court.

(e) Borough bailiffs may, within their respective boroughs, execute all legal process which state marshals or constables may execute.

**Connecticut General Statute § 52-53 – state marshal may make special deputation**

Conn. Gen. Stat. § 52-53 (2008)

§ 52-53. State marshal may make special deputation.

A state marshal may, on any special occasion, depute, in writing on the back of the process, any proper person to serve it. After serving the process, such person shall make oath before a justice of the peace that he or she faithfully served the process according to such person's endorsement thereon and did not fill out the process or direct any person to fill it out; and, if such justice of the peace certifies on the process that such justice of the peace administered such oath, the service shall be valid.

**Connecticut General Statute § 52-261 – fees and expenses of officers and persons  
serving process or performing other duties**

§ 52-261. Fees and expenses of officers and persons serving process or performing other duties.

(a) Except as provided in subsection (b) of this section and section 52-261a, each officer or person who serves process, summons or attachments shall receive a fee of not more than thirty dollars for each process served and an additional fee of thirty dollars for the second and each subsequent service of such process, except that such officer or person shall receive an additional fee of ten dollars for each subsequent service of such process at the same address or for notification of the office of the Attorney General in dissolution and postjudgment proceedings if a party or child is receiving public assistance. Each such officer or person shall also receive the fee set by the Department of Administrative Services for state employees for each mile of travel, to be computed from the place where such officer or person received the process to the place of service, and thence in the case of civil process to the place of return. If more than one process is served on one person at one time by any such officer or person, the total cost of travel for the service shall be the same as for the service of one process only. Each officer or person who serves process shall also receive the moneys actually paid for town clerk's fees on the service of process. Any officer or person required to summon jurors by personal service of a warrant to attend court shall receive for the first ten miles of travel while so engaged, such mileage to be computed from the place where such officer or person receives the process to the place of service, twenty-five cents for each mile, and for each additional mile, ten cents. For summoning any juror to attend court otherwise than by personal service of the warrant, such officer or person shall receive only the sum of fifty cents and actual disbursements necessarily expended by such officer or person in making service thereof as directed. Notwithstanding the provisions of this section, for summoning grand jurors, such officer or person shall receive only such officer's or person's actual expenses and such reasonable sum for services as are taxed by the court. The following fees shall be allowed and paid: (1) For taking bail or bail bond, one dollar; (2) for copies of writs and complaints, exclusive of endorsements, one dollar per page, not to exceed a total amount of nine hundred dollars in any particular matter; (3) for endorsements, forty cents per page or fraction thereof; (4) for service of a warrant for the seizure of intoxicating liquors, or for posting and leaving notices after the seizure, or for the destruction or delivery of any such liquors under order of court, twenty dollars; (5) for the removal and custody of such liquors so seized, reasonable expenses, and twenty dollars; (6) for the levy of an execution, when the money is actually collected and paid over, or the debt or a portion of the debt is secured by the officer, fifteen per cent on the amount of the execution, provided the minimum fee for such execution shall be thirty dollars; (7) on the levy of an execution on real property and on application for sale of personal property attached, to each appraiser, for each half day of actual service, reasonable and customary expenses; (8) for causing an execution levied on real property to be recorded, fees for travel, twenty dollars and costs; (9) for services on an application for the sale of personal property attached, or in selling mortgaged property foreclosed under a decree of court, the same fees as for similar services on executions; (10) for committing any person to a community correctional center, in civil actions, twenty-one cents a mile for travel, from the place of the court to the community correctional center, in lieu of all other expenses; and (11) for summoning and attending a jury for reassessing damages or benefits on a highway, three dollars a day. The court shall tax as costs a reasonable amount for the care of property held by any officer under attachment or execution. The officer serving any attachment or execution may

claim compensation for time and expenses of any person, in keeping, securing or removing property taken thereon, provided such officer shall make out a bill. The bill shall specify the labor done, and by whom, the time spent, the travel, the money paid, if any, and to whom and for what. The compensation for the services shall be reasonable and customary and the amount of expenses and shall be taxed by the court with the costs.

(b) Each officer or person shall receive the following fees: (1) For service of an execution on a summary process judgment, not more than fifty dollars; and (2) for removal under section 47a-42 of a defendant or other occupant bound by a summary process judgment, and the possessions and personal effects of such defendant or other occupant, not more than seventy-five dollars per hour.

**Connecticut General Statute § 6-32 – duties (of state marshals)**



Conn. Gen. Stat. § 6-32 (2008)

§ 6-32. Duties.

Each state marshal shall receive each process directed to such marshal when tendered, execute it promptly and make true return thereof; and shall, without any fee, give receipts when demanded for all civil process delivered to such marshal to be served, specifying the names of the parties, the date of the writ, the time of delivery and the sum or thing in demand. If any state marshal does not duly and promptly execute and return any such process or makes a false or illegal return thereof, such marshal shall be liable to pay double the amount of all damages to the party aggrieved. Conn. Gen. Stat. § 6-38b (2008)

**Connecticut General Statute § 6-38a – state marshal. Authority to provide legal execution and service of process**

Conn. Gen. Stat. § 6-38a (2008)

§ 6-38a. State marshal. Authority to provide legal execution and service of process.

(a) For the purposes of the general statutes, "state marshal" means a qualified deputy sheriff incumbent on June 30, 2000, under section 6-38 or appointed pursuant to section 6-38b who shall have authority to provide legal execution and service of process in the counties in this state pursuant to section 6-38 as an independent contractor compensated on a fee for service basis, determined, subject to any minimum rate promulgated by the state, by agreement with an attorney, court or public agency requiring execution or service of process.

(b) Any state marshal, shall, in the performance of execution or service of process functions, have the right of entry on private property and no such person shall be personally liable for damage or injury, not wanton, reckless or malicious, caused by the discharge of such functions.

**Connecticut General Statute § 6-38b – State Marshal Commission. Members.  
Regulations. Duties. Appointment of state marshal to fill vacancy.**

§ 6-38b. State Marshal Commission. Members. Regulations. Duties. Appointment of state marshal to fill vacancy.

(a) There is established a State Marshal Commission which shall consist of eight members appointed as follows: (1) The Chief Justice shall appoint one member who shall be a judge of the Superior Court; (2) the speaker of the House of Representatives, the president pro tempore of the Senate, the majority and minority leaders of the House of Representatives and the majority and minority leaders of the Senate shall each appoint one member; and (3) the Governor shall appoint one member who shall serve as chairperson. No member of the commission shall be a state marshal, except that two state marshals appointed by the State Marshals Advisory Board in accordance with section 6-38c shall serve as ex officio, nonvoting members of the commission.

(b) The chairperson shall serve for a three-year term and all appointments of members to replace those whose terms expire shall be for terms of three years.

(c) No more than four of the members, other than the chairperson, may be members of the same political party. Of the seven nonjudicial members, other than the chairperson, at least three shall not be members of the bar of any state.

(d) If any vacancy occurs on the commission, the appointing authority having the power to make the initial appointment under the provisions of this section shall appoint a person for the unexpired term in accordance with the provisions of this section.

(e) Members shall serve without compensation but shall be reimbursed for actual expenses incurred while engaged in the duties of the commission.

(f) The commission, in consultation with the State Marshals Advisory Board, shall adopt regulations in accordance with the provisions of chapter 54 to establish professional standards, including training requirements and minimum fees for execution and service of process.

(g) The commission shall be responsible for the equitable assignment of service of restraining orders to the state marshals in each county and ensure that such restraining orders are served expeditiously. Failure of any state marshal to accept for service any restraining order assigned by the commission or to serve such restraining order expeditiously without good cause shall be sufficient for the convening of a hearing for removal under subsection (j) of this section.

(h) Any vacancy in the position of state marshal in any county as provided in section 6-38 shall be filled by the commission with an applicant who shall be an elector in the county where such vacancy occurs. Any applicant for such vacancy shall be subject to the application and investigation requirements of the commission.

(i) Except as provided in section 6-38f, no person may be a state marshal and a state employee at the same time. This subsection does not apply to any person who was both a state employee and a deputy sheriff or special deputy sheriff on April 27, 2000.

(j) No state marshal may be removed except by order of the commission for cause after due notice and hearing.

(k) The commission may adopt such rules as it deems necessary for conduct of its internal affairs and shall adopt regulations in accordance with the provisions of chapter 54 for the application and investigation requirements for filling vacancies in the position of state marshal.

(l) The commission shall be within the Department of Administrative Services for administrative purposes only.

**Connecticut General Statute § 6-38e – review and audit of records and accounts of state marshals by State Marshal Commission**

Conn. Gen. Stat. § 6-38e (2008)

§ 6-38e. Review and audit of records and accounts of state marshals by State Marshal Commission.

The State Marshal Commission shall periodically review and audit the records and accounts of the state marshals. Upon the death or disability of a state marshal, the commission shall appoint a qualified individual to oversee and audit the records and accounts of such state marshal and render an accounting to the commission. All information obtained by the commission from any audit conducted pursuant to this section shall be confidential and shall not be subject to disclosure under the Freedom of Information Act, as defined in [section 1-200](#).



**Connecticut General Statute § 6-38f – State Marshal Commission to appoint state marshals.**

Conn. Gen. Stat. § 6-38f (2008)

§ 6-38f. State Marshal Commission to appoint state marshals. Evidence of service as a deputy sheriff. Appeal. Notification by deputy sheriffs re desire to be appointed state marshal. Notification of decisions to State Marshal Commission.

(a)(1) Notwithstanding the provisions of [section 6-38](#), the State Marshal Commission shall appoint as a state marshal any eligible individual who applies for such a position. For the purposes of this section, "eligible individual" means an individual who was a deputy sheriff or special deputy sheriff of a corporation on or after May 31, 1995, who had served as a deputy sheriff or special deputy sheriff of a corporation for a period of not less than four years and who has submitted an application to the State Marshal Commission on or before July 31, 2001, provided any such eligible individual submitted an initial application dated on or before June 30, 2000.

(2) For the purpose of showing proof that an individual has served as a deputy sheriff as required by this subsection, information contained in the Connecticut State Register and Manual shall be accepted as evidence.

(3) Any person authorized to apply for appointment as a state marshal pursuant to this section who is determined not to be eligible for such appointment by the State Marshal Commission may appeal such determination to the Superior Court for the judicial district of New Britain in accordance with the procedures and time periods set forth in chapter 54.

(b) Except as provided in subsection (a) of this section:

(1) Any deputy sheriff serving as a deputy sheriff on April 27, 2000, shall notify the Chief Court Administrator on or before June 30, 2000, of the desire of such deputy sheriff to be appointed as a state marshal;

(2) Any deputy sheriff performing court security, prisoner custody or transportation services on April 27, 2000, who desires to perform such functions as a judicial marshal, or desires to be appointed as a state marshal, shall so notify the Chief Court Administrator on or before June 30, 2000; and

(3) The Chief Court Administrator shall notify, in writing, the State Marshal Commission of the decisions of the deputy sheriffs pursuant to subdivisions (1) and (2) of this subsection.

(c) Except as provided in subsection (a) of this section, for purposes of the State Marshal Commission filling any vacancy in the position of state marshal in any county in accordance with subsection (h) of [section 6-38b](#), the State Marshal Commission shall not fill a vacancy in any county if the total number of state marshals in such county is equal to or exceeds the number allowed under [section 6-38](#).

**Connecticut General Statute § 6-38h – political contribution to appointing authority for  
State Marshal Commission affects eligibility for appointment as state marshal.**

Conn. Gen. Stat. § 6-38h (2008)

§ 6-38h. Political contribution to appointing authority for State Marshal Commission affects eligibility for appointment as state marshal.

Any person who pays, lends or contributes anything of value to a person who is an appointing authority for the State Marshal Commission under [section 6-38b](#) for political purposes shall not be eligible for appointment as a state marshal for a period of two years.

**Connecticut General Statute § 6-38m – annual fee to State Marshal Commission**

Conn. Gen. Stat. § 6-38m (2008)

§ 6-38m. Annual fee to State Marshal Commission.

Commencing October 1, 2001, and not later than October first each year thereafter, each state marshal shall pay an annual fee of two hundred fifty dollars to the State Marshal Commission, which fee shall be deposited in the General Fund.

**Connecticut Agencies Regs. § 6-38b-1 – qualifications**

Regs., Conn. State Agencies § 6-38b-1 (2009)

#### Sec. 6-38b-1. Qualifications

To qualify as a state marshal pursuant to [section 6-38b of the Connecticut General Statutes](#), a person shall:

- (1) Be an elector in the county in which a vacancy for the position of state marshal exists;
- (2) Speak, write and read the English language;
- (3) Be at least 21 years of age;
- (4) Have been awarded a high school diploma or general equivalency diploma (GED);
- (5) Be free from any physical, mental or emotional disorder that would prevent the person from performing the duties of a state marshal;
- (6) Be of good moral character;
- (7) Have a valid Connecticut driver's license; and
- (8) Have passed the examination required under [section 6-38b-3 of the Regulations of Connecticut State Agencies](#) and have completed all required training. The State Marshal Commission may waive the examination requirement for persons who previously served as deputy sheriffs in the state of Connecticut.



**Connecticut Agencies Regs. § 6-38b-2 – application**

Sec. 6-38b-2. Application

(a) The State Marshal Commission shall provide an application form for appointment as a state marshal.

(b) All applications for appointment as a state marshal shall be typewritten or hand-printed and submitted to the commission in the form referred to in subsection (a) of this section.

(c) All applications shall be submitted under oath, sworn before and acknowledged by a notary public, that the information given is true. All applications shall include the following information:

- (1) All names by which the applicant has been known;
  - (2) The applicant's residence mailing address;
  - (3) The applicant's residence telephone number;
  - (4) The applicant's business mailing address;
  - (5) The applicant's business telephone number;
  - (6) Whether the applicant is over the age of 21;
  - (7) The applicant's Connecticut driver's license number and expiration date;
  - (8) Whether the applicant is an elector in the county in which the vacancy occurs;
  - (9) The applicant's criminal convictions and any pending criminal charges;
  - (10) The applicant's employment history for the five years immediately preceding the date of application;
  - (11) The names of three Connecticut residents who are not members of the applicant's immediate or extended family or household, who can attest to the applicant's good character;
  - (12) Whether the applicant is free from any physical, mental or emotional disorder that would prevent him or her from performing the duties of a state marshal; and
  - (13) The applicant's signature.
- (d) The commission shall conduct a background investigation of an applicant to determine if the

applicant possesses the qualifications set out in this section including, but not limited to, criminal background checks, and contact with references and current and/or former employers. All applications shall be accompanied by a fully executed authorization in a form to be provided by the commission authorizing the commission to access information concerning the applicant's background.

(e) An applicant may be required to submit a letter from a physician stating whether he or she has any physical, mental or emotional disorder that would prevent the person from performing the duties of a state marshal, or the commission may require the applicant to undergo a physical/mental examination.

**Connecticut Agencies Regs. § 6-38b-3 – examination**

Regs., Conn. State Agencies § 6-38b-3 (2009)

Sec. 6-38b-3. Examination

(a) The State Marshal Commission shall administer to each applicant for appointment as a state marshal a written examination to determine the applicant's knowledge of service of process and execution.

(b) The examination shall include, but not be limited to, the following subjects:

(1) The functions of a state marshal, including, service of process and execution; and

(2) Familiarity with the applicable portions of the Connecticut General Statutes, the Connecticut Practice Book and the commission's regulations.

(c) A raw score of at least 80 percent shall be required to pass the examination.

New section added Conn. Law Journal November 19, 2002, effective October 3, 2002

Regs., Conn. State Agencies § 6-38b-4 (2009)

**Connecticut Agencies Regs. § 6-38b-4 – training**

#### Sec. 6-38b-4. Training

(a) The State Marshal Commission shall publish a manual providing information relevant to the duties and responsibilities of state marshals. This manual shall be provided to all state marshals.

(b) The commission shall establish a statewide training program for state marshals appointed pursuant to [section 6-38b of the Connecticut General Statutes](#). The commission shall appoint instructors for such program who shall hold classes on the subject area of a state marshal's duties and responsibilities, as determined by the commission after consultation with the State Marshal Advisory Board.

(c) State marshals shall comply with all continuing education requirements and certification or re-certification requirements as established by regulation.

New section added Conn. Law Journal November 19, 2002, effective October 3, 2002

**Connecticut Agencies Regs. § 6-38b-5 -- Appointment**



Regs., Conn. State Agencies § 6-38b-5

TITLE 6 COUNTIES & COUNTY OFFICERS  
STATE MARSHAL COMMISSION  
PROFESSIONAL STANDARDS (INCLUDING DISCIPLINARY PROCESS), TRAINING  
AND MINIMUM FEES

Regs., Conn. State Agencies § 6-38b-5 (2009)

Sec. 6-38b-5. Appointment

(a) No person shall be appointed as a state marshal pursuant to [section 6-38b of the Connecticut General Statutes](#) unless such person:

(1) Meets all of the qualification requirements set forth in [section 6-38b-1 of the Regulations of Connecticut State Agencies](#);

(2) Has submitted an application which complies in all respects with [section 6-38b-2 of the Regulations of Connecticut State Agencies](#);

(3) Has completed and passed the examination administered pursuant to [section 6-38b-3 of the Regulations of Connecticut State Agencies](#) in compliance with all rules governing the examination, pursuant to chapter 67 of the Connecticut General Statutes, unless waived in accordance with the provisions of subdivision (8) of [section 6-38b-1 of the Regulations of Connecticut State Agencies](#);

(4) Has satisfactorily completed the training program required in [section 6-38b-4 of the Regulations of Connecticut State Agencies](#);

(5) Is in compliance with [section 6-39 of the Connecticut General Statutes](#);

(6) Provides to the State Marshal Commission sufficient evidence that the applicant has in effect personal liability insurance which complies with the requirements of [section 6-30a of the Connecticut General Statutes](#); and

(7) Has been fingerprinted and successfully passed a federal and state records check.

(b) The commission may deny appointment of an applicant because of a prior conviction of a crime if, after considering:

(1) The nature of the crime and its relationship to the job for which the person has applied;

(2) Information pertaining to the degree of rehabilitation of the convicted person; and

(3) The time elapsed since the conviction or release, the commission determines that the applicant is not suitable to be a state marshal.

(c) The commission shall issue to newly-appointed state marshals a certificate of appointment, an identification card and a badge. All state marshals shall carry the identification card and badge with them while performing the duties of a state marshal.

New section added Conn. Law Journal November 19, 2002, effective October 3, 2002

**Connecticut Agencies Regs. § 6-38b-6 – standards of conduct**

## REGULATIONS OF CONNECTICUT STATE AGENCIES

### TITLE 6 COUNTIES & COUNTY OFFICERS STATE MARSHAL COMMISSION PROFESSIONAL STANDARDS (INCLUDING DISCIPLINARY PROCESS), TRAINING AND MINIMUM FEES

Regs., Conn. State Agencies § 6-38b-6 (2009)

#### Sec. 6-38b-6. Standards of conduct

A state marshal shall:

- (1) Comply with all federal, state and local laws, including all applicable state laws, rules of court and regulations concerning a state marshal's duties;
- (2) Act with honesty and professional integrity with respect to all matters concerning his or her duties;
- (3) Not, while performing the duties of a state marshal, engage in the practice of law or render legal advice;
- (4) Perform services in a timely fashion in order to comply with any requirements stated in the Connecticut General Statutes;
- (5) Maintain up-to-date records of all process that identify all fees collected and disbursed;
- (6) Make his or her records available for inspection by the State Marshal Commission upon request;
- (7) Inform the commission of the trustee account identification number(s);
- (8) Notify the commission, in writing, of his or her intention to perform collection work for any client, prior to engaging in such collection work and
  - (A) Deposit all funds collected on behalf of any client in a non-interest bearing trustee account, provided no such funds may be commingled with any non-client funds;
  - (B) Advise the commission, in writing, of the name of the banking institution, branch address, and the name and number of any such trustee account opened or closed;
  - (C) Deliver any funds to the owner in accordance with the Connecticut General Statutes.

(9) No checks from the trustee account shall be made payable to "cash". No disbursements may be made from the trustee account except for remittance to the client, the disbursement of the applicable fee to the state marshal and for expenses directly related to a specific client. When specific client expenses are paid from the trustee account, the check shall note the name of the client and the nature of the expense. An amount not to exceed \$ 1,250.00 may be retained in the trustee account to provide for bank charges.

(10) Not use his or her powers, his or her appointment, or any of the incidents thereof, for personal gain or to gain an advantage for another person, other than the authorized collection of fees for service of process or other duties performed by the state marshal;

(11) Not use his or her position for an unlawful, unauthorized or improper purpose;

(12) Not use his or her powers, his or her appointment, or any of the incidents thereof, in connection with any personal matter or dispute;

(13) Not consume alcohol or be under the influence of alcohol while involved in performing his or her duties and not use illegal drugs at any time;

(14) Cooperate fully and truthfully in any inquiry or investigation conducted by the commission or any law enforcement or regulatory agency, subject to the exercise of applicable privileges;

(15) Inform the commission, within 48 hours after being arrested and inform the commission of the disposition of the case no later than 48 hours after being notified of such disposition;

(16) Remain at all times in a physical and mental condition suitable to the satisfactory performance of the duties of a state marshal;

(17) Apprise the commission in writing of any change in the state marshal's residence or business address or residence or business phone number within ten days of such change;

(18) Not display the credentials of a state marshal for any unauthorized, unlawful or improper purpose;

(19) Not knowingly violate the provisions of [section 6-38d of the Connecticut General Statutes](#); and

(20) Not engage in conduct that could harm or otherwise impugn his or her professional reputation, standing or integrity.

New section added Conn. Law Journal November 19, 2002, effective October 3, 2002

**Connecticut Agencies Regs. § 6-38b-7 – investigations**

#### Sec. 6-38b-7. Investigations

- (a) When the State Marshal Commission receives a written complaint concerning a state marshal, the commission shall notify the state marshal that a complaint has been received.
- (b) The State Marshal Commission may initiate and conduct any investigation that the commission deems necessary within the commission's jurisdiction. The commission shall send a notice of such investigation to the state marshal being investigated.
- (c) The commission may appoint an investigator.
- (d) The investigator shall review the allegations against a state marshal and determine the course of any investigation.
- (e) The investigator shall prepare a report to include, at a minimum: copies of documents obtained; a summary of the information gathered and recommended findings.
- (f) Such findings shall be presented by the investigator to the commission for the purposes of determining the appropriate action to be taken in the matter.
- (g) The state marshal shall be notified in writing of any proposed action and advised of his or her right to a hearing.

New section added Conn. Law Journal November 19, 2002, effective October 3, 2002

**Connecticut Agencies Regs. § 6-38b-8 – disciplinary actions**



#### Sec. 6-38b-8. Disciplinary actions

(a) Emergency suspension of appointment - Emergency suspension of the appointment of a state marshal by the State Marshal Commission shall be in accordance with the process contained in [section 4-182\(c\) of the Connecticut General Statutes](#).

(b) The commission may suspend or revoke the appointment of a state marshal when it determines, after due notice and hearing that the state marshal:

(1) Lacks the ability, knowledge, skill, or professional judgment to perform the duties of a state marshal;

(2) Failed to maintain any of the qualification requirements of [section 6-38b-1 of the Regulations of Connecticut State Agencies](#);

(3) Has failed to perform the duties and responsibilities of a state marshal, and that failure resulted in: (A) the life, health, or safety of a person being placed in jeopardy of death or injury; or (B) a person's property being placed in jeopardy of loss or damage;

(4) Since appointment, has been convicted of a crime, after consideration of the nature of the crime and its relationship to the position of state marshal;

(5) Has been found to have falsified or omitted information required to be provided in the state marshal application process;

(6) Misapplied or misappropriated money or property;

(7) Engaged routinely in inaccurate accounting;

(8) Failed to account for funds;

(9) Failed to be in compliance with [section 6-39 of the Connecticut General Statutes](#);

(10) Failed to adhere to the accounting practices contained in [section 6-38b-6 of the Regulations of Connecticut State Agencies](#);

(11) Failed to maintain the insurance required by [section 6-30a of the Connecticut General Statutes](#); or

(12) Knowingly violated the provisions of [section 6-38d of the Connecticut General Statutes](#).

(c) Suspension or revocation of the appointment of a state marshal may also be imposed for any conduct that could harm or otherwise impugn his or her professional reputation, standing or integrity, including violations of [section 6-38b-6 of the Regulations of Connecticut State Agencies](#).

(d) Suspension or revocation of the appointment of a state marshal may be considered for violation of [section 6-38b-6\(16\) of the Regulations of Connecticut State Agencies](#). The commission may, after due consideration and review of the circumstances in the matter, require that the state marshal submit to a medical examination.

New section added Conn. Law Journal November 19, 2002, effective October 3, 2002

**Connecticut Agencies Regs. § 6-38b-9 – hearing procedure**

## Sec. 6-38b-9. Hearing procedure

Hearings shall be conducted in accordance with the provisions of the Uniform Administrative Procedure Act, [section 4-166, et seq., of the Connecticut General Statutes](#).

The hearing may be held before one or more hearing officers or one or more members of the State Marshal Commission. No individual who has personally carried out the function of an investigator in a contested case may serve as a hearing officer.

(1) Official address. All correspondence relating to hearings shall be addressed to: State Marshal Commission, 765 Asylum Avenue, Hartford, Connecticut 06105.

(2) Notice of hearings. The hearing/presiding officer shall mail a notice of hearing to all parties. Notice shall be mailed to the addresses provided to the commission by the parties, at least ten (10) days before the scheduled hearing, unless all parties waive the requirement of advance notice. The notice shall include a statement of the time, place, the legal authority under which the hearing is to be held, reference to the particular sections of the statutes and regulations involved and nature of the hearing and a short and plain statement of the matters asserted. If the hearing/presiding officer is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

(3) Location of hearings. Hearings shall be held at 765 Asylum Avenue, Hartford, Connecticut and at such other location or locations as the hearing/presiding officer may designate.

(4) Postponements and adjournments. Postponements or adjournments shall be granted only for good cause shown upon a request made to the hearing/presiding officer. The hearing/presiding officer may reschedule a hearing or adjourn a hearing in progress to another date and time.

(5) Waiver of oral hearing and personal appearance. Any state marshal who is the subject of a hearing may waive oral hearing and personal appearance and request that the matter be adjudicated on the basis of the available written and demonstrative evidence on file with the hearing/presiding officer including any evidence submitted by the state marshal who is the subject of the hearing.

(6) Adjudication in absence of a party. Where the hearing/presiding officer finds that the notice of hearing has been properly served by mail and the respondent or any witness has failed to appear, the hearing/presiding officer may in his or her discretion hear the case.

(7) Rules of evidence. The rules of evidence set forth in [section 4-178 of the Connecticut General Statutes](#) shall apply.

(8) Limiting number of witnesses. To avoid unnecessary cumulative evidence, the hearing/presiding officer may limit the number of witnesses or the time for testimony upon a particular issue in the course of any hearing. The hearing/presiding officer may permit any party to offer testimony in written form, if it will expedite the hearing. Such written testimony shall be

received in evidence with the same force and effect as though it were stated orally by the witness who has given the evidence, provided that the interests of the parties shall not be prejudiced substantially. Any party or witness who submits written testimony shall be present at the hearing at which such testimony is offered and shall adopt the written testimony under oath unless the opposing party has waived the right to cross-examine such party or witness as provided in subsection (9) of this section.

(9) Cross-examination. A party may conduct cross-examinations required for a full and true disclosure of the facts.

(10) Final decision.

(A) A final decision following a hearing shall be in writing or stated in the record. The hearing/presiding officer shall, after hearing a matter, make a proposed final decision to the commission. The commission shall review the proposed final decision of the hearing/presiding officer and render a final decision.

(B) All parties shall be notified either personally or by mail of the final decision.

(11) Any appeal of the final decision of the commission shall be in accordance with [section 4-183 of the Connecticut General Statutes](#).

(12) A state marshal may have legal representation, at his or her own expense, at a hearing to which he or she is a party.

New section added Conn. Law Journal November 19, 2002, effective October 3, 2002

**Connecticut Agencies Regs. § 6-38b-10 – minimum fees for service of process and execution**

Regs., Conn. State Agencies § 6-38b-10 (2009)

Sec. 6-38b-10. Minimum fees for service of process and execution

Except as otherwise provided in the Connecticut General Statutes:

- (1) Each state marshal who serves process, summons or attachments shall receive a fee of not less than five dollars (\$ 5.00) for each process served.
- (2) Each state marshal who serves an execution on a summary process judgment shall receive a fee of not less than twelve dollars and fifty cents (\$ 12.50).
- (3) Each state marshal who removes a defendant under [section 47a-42 of the Connecticut General Statutes](#), or other occupant bound by a summary process judgment, and the possessions and personal effects of such defendant or other occupant, shall receive a fee of not less than eighteen dollars and seventy-five cents (\$ 18.75).

New section added Conn. Law Journal November 19, 2002, effective October 3, 2002

## DELAWARE PROCESS SERVER REQUIREMENTS

The requirements for process servers in the state of Delaware vary by court. The Court of Chancery, the Court of Common Pleas, and the Justice of the Peace Courts all require registration for special process servers.

Court	Requirement
Court of Chancery <sup>7</sup>	<ul style="list-style-type: none"><li>• Annual registration requirement</li><li>• No education requirement</li></ul>
Superior Court	<ul style="list-style-type: none"><li>• No requirements</li></ul>
Family Court <sup>8</sup>	<ul style="list-style-type: none"><li>• Delaware Family Court Civil Rule 4(c) requires that “[s]ervice of process shall be made by the sheriff to whom the writ is directed, by a sheriff’s deputy, by a deputy designated and sworn by the Chief Judge, or by some person specially appointed by the Court for that purpose. . . .”</li></ul>
Court of Common Pleas <sup>9</sup>	<ul style="list-style-type: none"><li>• Annual registration requirement. The court has developed a packet with guidance for applicants. There is no separate court order outlining the process.</li></ul>
Justice of the Peace <sup>10</sup>	<ul style="list-style-type: none"><li>• Annual registration process. The court has developed a packet with guidance for applicants. There is no separate court order outlining the process. Process servers must complete an application and undergo a criminal justice background check.</li></ul>

### Appended Applicable Materials:

- Court of Common Pleas for the State of Delaware, Special Process Server Requirements
- Information on the Use of Special Process Servers for Cases Filed in the Justice of the Peace Courts

<sup>7</sup> Confirmed by Ken Lagowski, Administrator for the Office of Register and Chancery, State of Delaware (302-255-0539).

<sup>8</sup> Confirmed by Karen Disch, Director of Fiscal Services (karen.disch@state.de.us).

<sup>9</sup> Confirmed by Jackie Aff, Counsel, Court of Common Pleas ( 302-255-0862).

<sup>10</sup> Contact person is Ana Lewis, Administrative Office of the Justice of the Peace (302-323-4530).



## **COURT OF CHANCERY**

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE:  
SPECIAL PROCESS SERVER REQUIREMENTS

**STANDING ORDER**

This 31st day of March, 2008, it appearing that a uniform procedure should be established for registration with the Court as a Special Process Server, as contemplated under Rule 4 of the Court of Chancery Rules, it is hereby

ORDERED as follows: Beginning May 1, 2008, it will be necessary for all persons serving process for Court of Chancery matters to be registered with the Court. This will be a license renewable annually on May 1 of each year. All companies and law firms who have in their employ individuals they want to register to be eligible to serve process must pay an initial registration fee of \$300 and thereafter an annual renewal fee of \$300. In addition, the company/firm must list the names of those individuals within their organization that they want to register as process servers. There will be an additional fee of \$50 per person named, renewable annually as well. Fees paid for the company/firm and individuals can be combined on one check made payable to the Register in Chancery. Checks should be

remitted to the attention of Ken Lagowski, Register in Chancery Office Administrator, in Wilmington.

This process will eliminate the need to file Motions and Proposed Orders for Special Process Server and beginning May 1, 2008 such Motions and Proposed Orders will no longer be accepted. Copies of the approved Application for Designation as a Special Process Server shall be the document the process server must carry with him or her to show authorization by the Court to serve process. The only thing the Register's Office will still require in each individual case is a letter of instructional information to assist them in preparing summonses in those instances where a lawyer or party still wants the Register in Chancery to prepare the summonses. Filing of a Praecipe and using the Sheriff is also still an option.

Any questions with respect to registration and implementation as a Special Process Server should be directed to Ken Lagowski at 255-0539, or his designee.

Chancellor

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Chancellor

## **FAMILY COURT**

DELAWARE COURT RULES ANNOTATED  
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\*\*\* THIS DOCUMENT IS CURRENT THROUGH OCTOBER 26, 2009 \*\*\*  
\*\*\* ANNOTATIONS ARE CURRENT THROUGH AUGUST 29, 2009 \*\*\*

FAMILY COURT RULES OF CIVIL PROCEDURE  
II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS  
AND ORDERS: DEPOSIT AND SECURITY FOR COSTS

Del. Fam. Ct. Civ. R. 4 (2009)

[Review Court Orders which may amend this Rule.](#)

Rule 4. Process

(a) Issuance of summons. -- Subject to subsections (d)(6) and (7) of this Rule, upon the commencement of an action, the Clerk shall forthwith issue the summons and shall deliver it together with a copy of the petition for service to the sheriff of the county or counties specified or to a person specially appointed by the Court to serve it. Upon direction of the petitioner, separate or additional process shall issue against any respondents.

(b) Contents of summons. -- The summons shall bear the date of its issuance, be signed by the Clerk or one of the Clerk's deputies, be under the seal of the Court, contain the name of the Court and the names of the parties, state the name of the official or other person to whom it is directed, the name and address of the petitioner's attorney, if any, otherwise the petitioner's address, and the time within which these Rules require the respondent to appear and respond, and shall notify the respondent that in case of the respondent's failure to do so, judgment by default may be rendered for the relief demanded in the complaint.

(c) By whom served. -- Service of process shall be made by the sheriff to whom the writ is directed, by a sheriff's deputy, by a deputy designated and sworn by the Chief Judge, or by some person specially appointed by the Court for that purpose, except that a subpoena may be served as provided in Rule 45.

(d) Service of process; how made. -- The summons and petition shall be served together. The Clerk shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual other than an infant or an incompetent person by delivering a copy of the summons and petition to the respondent personally or by leaving copies thereof at the respondent's dwelling or usual place of abode with some person of suitable age and discretion

then residing therein, or by delivering copies thereof to an agent authorized by appointment or by law to receive service of process.

(2) Upon an infant under the age of 18 years, if such infant has a parent, custodian or guardian in this State, by service upon such parent, custodian or guardian in the same manner as upon an individual, if the parent, custodian or guardian is an individual, or in the same manner as upon a corporation, if the parent, custodian or guardian is a corporation; and if there is no such parent, custodian or guardian, by service in the same manner as upon an individual, upon an adult person with whom such infant resides or has place of abode.

(3) Upon an incompetent person, if such person has a trustee or guardian in this State, by service upon such trustee or guardian, in the same manner as upon an individual, if the trustee or guardian is an individual; or in the same manner as upon a corporation, if such trustee or guardian is a corporation; and if there is no such trustee or guardian, by service in the same manner as upon an individual, upon an adult person with whom such incompetent person resides or has place of abode.

(4) As used herein, "trustee" or "guardian" refers to one appointed by the Court of competent jurisdiction in this State; provided, however, that a trustee or guardian duly appointed by a court of competent jurisdiction of another state may accept service and/or appear, upon filing proof of such appointment in the cause here pending.

(5) Upon an infant or incompetent person, not a resident of the State, in the same manner as upon a competent adult person who is not an inhabitant of or found within the State.

(6) Whenever a statute, Rule or Order provides for service of summons or of a notice or of an order in lieu of summons upon a party not an inhabitant of or found within the State, service shall be made under the circumstances in the manner prescribed by the statute, Rule or Order.

(7) Whenever, by statute or other Rule or Order some other method or methods of service of process is required for a particular action, including service by publication, then the statute or other Rule or Order of this Court shall control and supersede the method(s) of service provided herein and, whenever by statute ([10 Del. C. Section 1065](#), 13 Del. C. Section 807(b), [10 Del. C. Section 3104](#), or other) or other Rule or Order of this Court, some other method(s) of service of process may be permitted which is not in contravention of a specific statute or Rule or Order of this Court, then the Clerk is authorized and empowered to utilize such alternative method(s) of service.

(e) Return of process. -- The summons provided in paragraph (a) hereof shall be returnable 20 days after the issuance thereof unless otherwise specially ordered. The person serving the process shall make return thereof to the Court promptly after service and in any event on the return day thereof. Process which cannot be served before the return day thereof shall be returned on the return day and such return shall set forth the reasons why service could not be had. If service is made by a person other than by the officer or the officer's deputy or a deputy appointed by the Chief Judge, that return shall be verified. Failure to make a return or proof of service shall not affect the validity of service.

(f) Amendment of process. -- At any time in its discretion and upon such terms as it deems just, the Court may allow any process or return of proof of service to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(g) Notices. -- After a party or attorney has been served with a summons and/or has entered an appearance, notice of the time, date and place of any proceeding may be (1) given in Court, or (2) sent by ordinary first-class mail to the last known address of the parties, or (3) served personally, or (4) communicated in any such other reasonable manner as the Court may direct.

SERVICE EFFECTIVE. --Service of process on a parent was effective and complete under [13 Del. C. § 1107A](#), Fam. Ct. Civ. R. 4(d)(1), and Fam. Ct. Civ. R. 5(c) when the termination of parental rights papers were received by the parent's sibling at the parent's "last known address." [Waters v. Div. of Family Servs., 918 A.2d 339 \(Del. 2006\)](#), appeal dismissed, [957 A.2d 2 \(Del. 2008\)](#).

## **COURT OF COMMON PLEAS**



**IN THE COURT OF COMMON PLEAS  
FOR THE STATE OF DELAWARE**

**SPECIAL PROCESS SERVER REQUIREMENTS**

All applicants seeking designation as a special process server must complete the attached affidavit. The affidavit attests that applicant has never been convicted of a felony or been dishonorably discharged from the military. First time applicants must also include a resume. Servers are approved as individuals – a company or corporation must file an application for each individual they employ to serve summons for this Court in New Castle County.

All applications must be accompanied by a motion from an attorney who intends to utilize the services of the proposed special process server.

Approval will be granted for a calendar year and applicants must re-apply and pay a \$50 fee each January with the appropriate affidavit and motion. A review before the Chief Judge may be scheduled if indicated by past service or if complaints have been filed.

If your case is an isolated one where an individual is required on an “as needed” basis for a specific service, a motion must be provided for a Judge’s signature. The motion should show the qualifications of the special process server, the reason that “standard” (sheriff, etc.) service is not adequate and any other information the Judge should rely on to make a decision. These may also be used for execution (wage attachment service) in extreme or unusual circumstances; normally, a special process server is approved only for service of summonses and subpoenas.

All civil cases must include the NAME of an approved process server on the praecipe (direction for service.) The Court requires the service affidavit to include the name of the process server identified on the praecipe.

**APPLICATION FOR DESIGNATION AS A SPECIAL PROCESS SERVER**  
**FOR CASES FILED IN THE COURT OF COMMON PLEAS**

1. NAME OF INDIVIDUAL: \_\_\_\_\_

\_\_\_\_\_

2. ADDRESS: \_\_\_\_\_

\_\_\_\_\_

3. HOME PHONE: (\_\_\_\_)\_\_\_\_\_ 4. WORK PHONE: (\_\_\_\_)\_\_\_\_\_

5. DRIVERS LICENSE NO: \_\_\_\_\_ 6. BIRTH DATE: \_\_\_\_\_

7. HEIGHT: \_\_\_\_\_ WEIGHT: \_\_\_\_\_ 8. HAIR COLOR: \_\_\_\_\_

9. EYE COLOR: \_\_\_\_\_

10. OCCUPATION: \_\_\_\_\_

11. COMPANY NAME: \_\_\_\_\_

12. COMPANY ADDRESS: \_\_\_\_\_

13. COMPANY PHONE: (\_\_\_\_)\_\_\_\_\_

14. HOW LONG WITH COMPANY: \_\_\_\_\_YRS. \_\_\_\_\_MOS.

15. DOES THE COMPANY MAINTAIN A STATE OF DELAWARE BUSINESS LICENSE?  
(A business license is required for designation.) Yes ☐ No ☐. A copy of the license  
must be attached to this application.

16. STANDARD FEE CHARGED TO CLIENTS FOR SERVING PROCESS: \$\_\_\_\_\_

17. STANDARD TERMS FOR SERVING PROCESS (i.e., payment required only if  
process is served on defendant, or specified number of attempts of service which will  
be made per fee):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

18. EMPLOYMENT REFERENCES:

- (a) \_\_\_\_\_ CONTACT PERSON: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
  
PHONE: (\_\_\_\_)\_\_\_\_\_ FAX: (\_\_\_\_)\_\_\_\_\_  
  
(b) \_\_\_\_\_ CONTACT PERSON: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
  
PHONE: (\_\_\_\_)\_\_\_\_\_ FAX: (\_\_\_\_)\_\_\_\_\_  
  
(c) \_\_\_\_\_ CONTACT PERSON: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
  
PHONE: (\_\_\_\_)\_\_\_\_\_ FAX: (\_\_\_\_)\_\_\_\_\_

19. Have you ever been arrested and convicted of anything other than a traffic violation?

YES ☐ NO ☐

If yes, please attach a copy of your criminal history record (THIS APPLICATION WILL NOT BE PROCESSED WITHOUT A CERTIFIED COPY OF YOUR CRIMINAL HISTORY RECORD.) A copy of your record may be obtained through the State Bureau of Identification, State Police Headquarters, 1441 N. DuPont Highway, Dover, DE 19901. The telephone number is (302) 739-5871.

**CERTIFICATION OF APPLICANTS SEEKING DESIGNATION AS SPECIAL  
PROCESS SERVER FOR THE COURT OF COMMON PLEAS IN NEW CASTLE  
COUNTY:**

I, \_\_\_\_\_, swear/affirm under oath that I have never been convicted of a felony and have never been dishonorably discharged from the military. I will perform the duties of a process server in compliance with the provisions of law governing the service of process in this state.

I further swear/affirm under oath that:

I will perform personal service of Court of Common Pleas documents in a business-like manner in accordance with all applicable statutes, rules of procedure and Court of Common Pleas policies and procedures regarding personal service.

I acknowledge that I may not represent myself as an officer of the Court.

I will return personally “served” documents to the Court of Common Pleas **no later than three (3) days** following service, except forthwith summonses and subpoenas must be returned immediately to the Court.

I will return process documents bearing no scheduled hearing or trial date information to the Court **no later than thirty (30) days from pick up, whether served or non-est.**

I will return documents bearing a hearing date to the Court of Common Pleas **at least four (4) business days prior to the hearing date, whether served or non-est.**

I will accurately, completely and legibly provide to the Court the requisite information on each document relative to service, as specified by the Court.

I will indemnify and hold the State of Delaware and all its agencies harmless from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused by or alleged to be caused by my acts or omissions and which arise out of my performance or failure to perform as specified above.

I authorize the State of Delaware to perform a background investigation as part of this application process for designation as a process server in cases filed in the Court of Common Pleas, and I authorize the release of any information from my references.

I acknowledge that payments related to the serving of process or subpoenas in cases filed in the Court of Common Pleas will come from private parties and that the State of Delaware or the Court of Common Pleas are not responsible for payments or for any other matters related to these services in any capacity.

I will not serve process or a subpoena in a case in which I am or my spouse is related to any of the parties involved in the case or has a personal or financial interest or involvement in the case.

I am 21 years of age or older.

I declare under penalty, under the laws of the State of Delaware, that the foregoing is true and correct.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Special Process Server

SWORN AND SUBSCRIBED before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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

**PRESIDENT/BUSINESS MANAGER OR OFFICER OF A CORPORATION OR  
COMPANY MUST COMPLETE THE FOLLOWING (if applicable):**

I swear or affirm under oath that:

The information provided by the business and the individual is true and accurate to the best of my knowledge.

It is the responsibility of the corporation or business to ensure that all persons who provide service of process or subpoenas for the corporation or business comply with the Court's requirements as outlined in this application.

The corporation or business will indemnify and hold the State of Delaware and all its agencies harmless from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused or alleged to be caused by acts or omissions of its contractors or employees and which arise out of the contractors or employees' performance or failure to perform as specified above.

The corporation or business acknowledges that payments related to the serving of process or subpoenas in cases filed in the Court of Common Pleas will come from private parties with whom it contracts and that the State of Delaware or the Court of Common Pleas are not responsible for payments or other matters related to the service of process or subpoenas in any capacity.

The corporation or business shall maintain a Delaware business license. I declare under penalty of perjury, under the laws of the State of Delaware, that the foregoing is true and correct.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Office/Business Manager of Company

SWORN TO AND SUBSCRIBED before this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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

For Court Use Only:

Name of Applicant: \_\_\_\_\_

Application reviewed by Karen Gallagher on \_\_\_\_\_

Submission to Chief Judge Alex J. Smalls:

Approved \_\_\_\_\_

Denied \_\_\_\_\_

Expiration Date \_\_\_\_\_

\_\_\_\_\_  
Chief Judge

## **JUSTICE OF THE PEACE COURTS**



J.P. Civ. Form No. 39 (Rev. 6/15/00)

**INFORMATION ON THE USE OF SPECIAL PROCESS SERVERS FOR  
CASES FILED IN THE JUSTICE OF THE PEACE COURTS**

1. The proper forms, including the Complaint (J.P. Civ. Form 1) and the appropriate Summons form (one of J.P. Civ. Form 2, 3 or 4), and Answer to Complaint (J.P. Civ. Form 7) for debt actions, must be filed in the Justice of the Peace Courts, a case number assigned to the case, and the summons signed by the court official. Once these forms have been processed, the Justice of the Peace Court will notify a Plaintiff who wishes to use a special process server designated by the Chief Magistrate of the availability of the forms for service by the designated special process server.
2. A Plaintiff wishing to use a special process server may only use a business or individual who has been designated by the Chief Magistrate of the Justice of the Peace Courts as a special process server for cases filed in the Justice of the Peace Courts. The special process server is not an officer of the court and does not have an official function with the Justice of the Peace Courts.
3. Designation as a special process server in Justice of the Peace Courts must be renewed annually and automatically expires one year after the date of the designation, unless the Chief Magistrate or designee withdraws the designation prior to that time. The special process servers are responsible for renewing their designation (or refiling an application).
4. All Justice of the Peace Civil Courts maintain a list of all designated special process servers and will make the list available for review by individuals upon request.
5. Special process servers must perform personal service of the Justice of the Peace Court documents in a businesslike manner in accordance with all applicable statutes, rules of procedure and Justice of the Peace Court policies and procedures regarding personal service.
6. Special process servers must return personally "served" documents to the Justice of the Peace Court noted on the documents **no later than three (3) days following service, except forthwith summonses must be returned immediately to**

**the court.**

7. Special process servers must return processed documents bearing no J.P. Civ. Form No. 39 (Rev. 6/15/00) scheduled hearing or trial date information to the Justice of the Peace Court noted on the document **no later than thirty (30) days from the date the document was picked up from the court, whether served or non-est.**

8. Special process servers must return documents bearing a hearing date **at least four (4) business days prior to the hearing date, whether served or non-est.**

9. Special process servers must accurately, completely and legibly provide to the court the requisite information on each document relative to service, including process server's signature and date and time of service and the signature of the person accepting service if required.

10. For landlord/tenant cases: If service other than personal service is made, proof of satisfaction of all the requirements for service must be provided to the court

(i.e., certification of posting of notice and complaint on rental unit and proof of mailing

notice and complaint, within one day of posting, by certified or registered mail to the

Defendant.) See 25 *Del. C.* § 5706.

11. Payments related to the serving of process in cases filed in the Justice of the Peace Court will come from the parties utilizing the special process servers and the

State of Delaware or the Justice of the Peace Courts are not responsible for payments or

for any other matters related to services provided by special process servers in any capacity.

12. Special process servers may not serve process in a case in which they or their spouses are related to any of the parties in the case or they have a personal or financial interest or involvement in the case.

13. Special process servers must be 21 years of age or older and a resident of the State of Delaware.

**APPLICATION FOR DESIGNATION AS SPECIAL PROCESS SERVER  
FOR ALL CASES FILED IN THE JUSTICE OF THE PEACE COURTS**

1. NAME OF CORPORATION/BUSINESS/INDIVIDUAL \_\_\_\_\_
2. ADDRESS: \_\_\_\_\_  
\_\_\_\_\_
3. PHONE: (\_\_\_\_) \_\_\_\_\_ 4. YEARS IN BUSINESS: \_\_\_\_\_
5. NAME OF PRESIDENT/MANAGING OFFICER: \_\_\_\_\_
6. DO YOU HAVE A STATE OF DELAWARE BUSINESS LICENSE? (A business license is required for designation) YES \_\_\_\_\_ NO \_\_\_\_\_ A COPY OF THE LICENSE MUST BE ATTACHED TO THIS APPLICATION.
7. STANDARD FEE CHARGED TO CLIENTS FOR SERVING PROCESS: \$ \_\_\_\_\_
8. STANDARD TERMS FOR SERVING PROCESS (i.e., payment required only if process is served on defendant, or specified number of attempts of service which will be made per fee): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. EMPLOYMENT REFERENCES:  
  
(1) \_\_\_\_\_ CONTACT PERSON: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
PHONE: (\_\_\_\_) \_\_\_\_\_ FAX: (\_\_\_\_) \_\_\_\_\_  
  
(2) \_\_\_\_\_ CONTACT PERSON: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
PHONE: (\_\_\_\_) \_\_\_\_\_ FAX: (\_\_\_\_) \_\_\_\_\_  
  
(3) \_\_\_\_\_ CONTACT PERSON: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
PHONE: (\_\_\_\_) \_\_\_\_\_ FAX: (\_\_\_\_) \_\_\_\_\_

10. INDIVIDUALS WHO WILL BE SERVING PROCESS (All individuals who will be serving process must complete questions 10 and 11 (additional blank forms for questions 10 and 11 are attached))

FULL NAME: \_\_\_\_\_  
LAST FIRST MIDDLE SUFFIX

ADDRESS: \_\_\_\_\_  
STREET STATE ZIP CODE

HOME PHONE: (\_\_\_\_) \_\_\_\_\_ SOCIAL SECURITY NO.: \_\_\_\_\_

WORK PHONE: (\_\_\_\_) \_\_\_\_\_ DRIVERS LICENSE NO.: \_\_\_\_\_

BIRTH DATE: \_\_\_\_\_ HEIGHT: \_\_\_\_\_ WEIGHT: \_\_\_\_\_

HAIR COLOR: \_\_\_\_\_ EYES: \_\_\_\_\_

OCCUPATION: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_ HOW LONG: \_\_\_\_\_ YRS. \_\_\_\_\_ MOS.

COMPANY ADDRESS: \_\_\_\_\_

COMPANY PHONE: (\_\_\_\_) \_\_\_\_\_

HAVE YOU EVER BEEN ARRESTED AND CONVICTED FOR ANYTHING OTHER THAN A TRAFFIC VIOLATION? YES \_\_\_\_\_ NO \_\_\_\_\_ Please attach a copy of your criminal history records (THIS APPLICATION WILL NOT BE PROCESSED WITHOUT A CERTIFIED COPY OF YOUR CRIMINAL HISTORY) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. CERTIFICATION, EACH INDIVIDUAL WHO WILL SERVE PROCESS IN A JUSTICE OF THE PEACE COURT CASE MUST COMPLETE THE FOLLOWING OATH OR AFFIRMATION:

*I swear or affirm under oath that*

- *I will perform personal service of Justice of the Peace Court documents in a business like manner in accordance with all applicable statutes, rules of procedure and Justice of the Peace Court policies and procedures regarding personal service.*

- *I acknowledge that I may not represent myself as an officer of the Court.*

- *I will return personally "served" documents to the Justice of the Peace Court noted on the documents **no later than three (3) days following service except forthwith summonses and subpoenas must be returned immediately to the court.***

- *For landlord/tenant cases only: If service other than personal service is made, proof of satisfaction of all the requirements for service must be provided to the court (i.e., certification of posting*

of notice and complaint on rental unit and proof of mailing notice and complaint within one day of posting, by certified or registered mail to the Defendant. See 25 Del. C. §5706.

- I will return process documents bearing no scheduled hearing or trial date information to the Court **no later than thirty (30) days from pick up, whether served or non-est.**

- I will return documents bearing a hearing date to the Justice of the Peace Court noted on the documents to the Court **at least four (4) business days prior to the hearing date, whether served or non-est.**

- I will accurately, completely and legibly provide to the Court the requisite information on each document relative to service, as specified by the Court. This will include affidavits of service and the signature of the person accepting service when required.

- I will indemnify and hold the State of Delaware and all of its agencies harmless from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused or alleged to be caused by my acts or omissions and which arise out of my performance or failure to perform as specified above.

- I authorize the State of Delaware to perform a background investigation as part of the application process for designation and a process server in cases filed in the Justice of the Peace Court, and I authorize the release of any information from my references.

- I acknowledge that payments related to the serving of process or subpoenas in cases filed in the Justice of the Peace Court will come from private parties and that the State of Delaware or the Justice of the Peace Courts are not responsible for payments or for other any matters related to these services in any capacity.

- I will not serve process or a subpoena in a case in which I am or my spouse is related to any of the parties in the case or has a personal or financial interest or involvement in the case.

- I am 21 years of age or older and a resident of the State of Delaware.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Special Process Server

SWORN TO AND SUBSCRIBED before me this \_\_\_\_\_ day of \_\_\_\_\_  
A.D. 20\_\_\_\_.

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

**12. PRESIDENT/BUSINESS MANAGER OR OFFICER OF A CORPORATION/COMPANY MUST COMPLETE THE FOLLOWING (if applicable):**

*I swear or affirm under oath that*

- *the information provided above by the business and the individual is true and accurate to the best of my knowledge.*

- *it is the responsibility of the corporation/business to ensure that all persons who provide service of process or subpoenas for the corporation/business comply with the requirements stated in question #11 above.*

- *the corporation /business will indemnify and hold the State of Delaware and all of its agencies harmless from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused or alleged to be caused by acts or omissions of its contractors or employees and which arise out of the contractors or employees' performance or failure to perform as specified above.*

- *the corporation/business acknowledges that payments related to the serving of process or subpoenas in cases filed in the Justice of the Peace Court will come from private parties with whom it contracts and that the State of Delaware or the Justice of the Peace Courts are not responsible for payment or other matters related to the service of process or subpoenas in any capacity.*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Officer/Business Manager of Company

SWORN TO AND SUBSCRIBED before me this \_\_\_\_\_ day of \_\_\_\_\_  
A.D. 20\_\_\_\_.

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

## **DISTRICT OF COLUMBIA PROCESS SERVER REQUIREMENTS**

The District of Columbia does not have any educational or registration requirements for private process servers. The Superior Court Rule of Civil Procedure (4)(c)(2) provides as follows:

Service may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, however, the Court may direct that service be effected by a United States marshal, deputy United States marshal, or other person or officer specially appointed by the Court for that purpose. Such direction shall be made only (a) when service is to be effected on behalf of the United States or an officer or agency thereof, or (b) when the Court issues an order stating that service by a United States marshal or deputy United States marshal or a person specially appointed for that purpose is required in order that service be properly effected in that particular action.

### **Appended Applicable Provisions:**

- District of Columbia Superior Court Rule of Civil Procedure 4(c)(2)
- District of Columbia superior Court Rule of Civil Procedure 4.1

**District of Columbia Superior Court Rule of Civil Procedure 4(c)(2)**



SUPERIOR COURT RULES OF CIVIL PROCEDURE  
II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS,  
AND ORDERS

D.C. SCR-Civil Rule 4 (2008)

Rule 4. Summons.

....

(c) Service with complaint; by whom made.

(1) A summons shall be served together with a copy of the complaint and initial order. The plaintiff is responsible for service of a summons, complaint and initial order within the time allowed under subdivision (m) and shall furnish the person effecting service with the necessary copies of the summons, complaint and initial order.

**(2) Service may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, however, the Court may direct that service be effected by a United States marshal, deputy United States marshal, or other person or officer specially appointed by the Court for that purpose. Such direction shall be made only (a) when service is to be effected on behalf of the United States or an officer or agency thereof, or (b) when the Court issues an order stating that service by a United States marshal or deputy United States marshal or a person specially appointed for that purpose is required in order that service be properly effected in that particular action.**

(3) As to any defendant described in subdivisions (e), (f), (h), or (j), service also may be effected by mailing a copy of the summons, complaint and initial order to the person to be served by registered or certified mail, return receipt requested.

(4) As to any defendant described in subdivisions (e), (f), or (h), service may be effected by mailing a copy of the summons, complaint and initial order by first-class mail, postage prepaid,

to the person to be served, together with two copies of a Notice and Acknowledgment conforming substantially to Form 1-A and a return envelope, postage prepaid, addressed to the sender. Unless good cause is shown for not doing so, the Court shall order the payment by the party served of the costs incurred in securing an alternative method of service authorized by this Rule if the person served does not complete and return, within 20 days after mailing, the Notice and Acknowledgment of receipt of the summons.

**District of Columbia Superior Court Rule of Civil Procedure 4.1**

SUPERIOR COURT RULES OF CIVIL PROCEDURE  
II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS,  
AND ORDERS

D.C. SCR-Civil Rule 4.1 (2008)

Rule 4.1. Service of other process.

(a) Generally. Process other than a summons as provided in Rule 4 or a subpoena as provided in Rule 45 may be served by a United States marshal, a deputy United States marshal, or unless otherwise provided by statute, by a person who is not a party and not less than 18 years of age, who shall make proof of service as provided in Rule 4(l). The process may be served anywhere within the District of Columbia, and, when authorized by applicable statute, beyond the territorial limits of the District of Columbia.

(b) Civil contempt proceedings. Orders in civil contempt proceedings shall be served in the District of Columbia or elsewhere within the United States if not more than 100 miles from the District of Columbia.



## **FLORIDA PROCESS SERVER REQUIREMENTS**

Under Florida law, only sheriffs and certified process servers can serve civil process. Fla. Stat. § 48.021; Fla. Stat. § 48.27. Requirements for certification vary by county and judicial circuits, but many judicial circuits have become involved in oversight of process servers. For example, the second and fifth judicial circuits have each adopted rules regarding certification and have Certified Civil Process Server Review Boards. (See, e.g., Fifth Circuit appended court order.) The circuits have also imposed education requirements. New applicants for certification must attend a two- to three-hour seminar and take a 45-question, multiple choice exam. The exam is given once a year. Upon renewal of their certification on their second year, process servers must take again the seminar and exam.<sup>1</sup>

### **Applicable Provisions:**

- Florida Statute § 48.021 – process; by whom served
- Florida Statute § 48.27 – certified process servers
- Florida Statute § 48.29 – certification of process servers
- Florida Statute § 48.31 – removal of certified process servers; false return of service
- Florida Rule of Civil Procedure 1.070 – process
- Florida Second Judicial Circuit AO 2008-21 (2008)

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<sup>1</sup> The contact person at the Fifth Circuit is Ms. Laurie Crews, Administrative Assistant for Court Administration. She's reachable at 352-353-1064.

**FLORIDA STATUTE § 48.021 – PROCESS; BY WHOM SERVED**

§ 48.021. Process; by whom served

(1) All process shall be served by the sheriff of the county where the person to be served is found, except initial nonenforceable civil process may be served by a special process server appointed by the sheriff as provided for in this section or by a certified process server as provided for in [ss. 48.25-48.31](#). Witness subpoenas may be served by any person authorized by rules of procedure.

(2) (a) The sheriff of each county may, in his or her discretion, establish an approved list of natural persons designated as special process servers. The sheriff shall add to such list the names of those natural persons who have met the requirements provided for in this section. Each natural person whose name has been added to the approved list is subject to annual recertification and reappointment by the sheriff. The sheriff shall prescribe an appropriate form for application for appointment. A reasonable fee for the processing of the application shall be charged.

(b) A person applying to become a special process server shall:

1. Be at least 18 years of age.
2. Have no mental or legal disability.
3. Be a permanent resident of the state.
4. Submit to a background investigation that includes the right to obtain and review the criminal record of the applicant.
5. Obtain and file with the application a certificate of good conduct that specifies there is no pending criminal case against the applicant and that there is no record of any felony conviction, nor a record of a misdemeanor involving moral turpitude or dishonesty, with respect to the applicant within the past 5 years.
6. Submit to an examination testing the applicant's knowledge of the laws and rules regarding the service of process. The content of the examination and the passing grade thereon, and the frequency and the location at which the examination is offered must be prescribed by the sheriff. The examination must be offered at least once annually.
7. Take an oath that the applicant will honestly, diligently, and faithfully exercise the duties of a special process server.

(c) The sheriff may prescribe additional rules and requirements directly related to subparagraphs (b)1.-7. regarding the eligibility of a person to become a special process server or to have his or her name maintained on the list of special process servers.

(d) An applicant who completes the requirements of this section must be designated as a special process server provided that the sheriff of the county has determined that the appointment of special process servers is necessary or desirable. Each special process server must be issued an identification card bearing his or her identification number, printed name, signature and photograph, and an expiration date. Each identification card must be renewable annually upon proof of good standing.

(e) The sheriff shall have the discretion to revoke an appointment at any time that he or she determines a special process server is not fully and properly discharging the duties as a special process server. The sheriff shall institute a program to determine whether the special process servers appointed as provided for in this section are faithfully discharging their duties pursuant to such appointment, and a reasonable fee may be charged for the costs of administering such program.

(3) A special process server appointed in accordance with this section shall be authorized to serve process in only the county in which the sheriff who appointed him or her resides and may charge a reasonable fee for his or her services.

(4) Any special process server shall be disinterested in any process he or she serves; and if the special process server willfully and knowingly executes a false return of service or otherwise violates the oath of office, he or she shall be guilty of a felony of the third degree, punishable as provided for in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#), and shall be permanently barred from serving process in Florida.



**FLORIDA STATUTE § 48.27 – CERTIFIED PROCESS SERVERS**

§ 48.27. Certified process servers

(1) The chief judge of each judicial circuit may establish an approved list of natural persons designated as certified process servers. The chief judge may periodically add to such list the names of those natural persons who have met the requirements for certification provided for in [s. 48.29](#). Each person whose name has been added to the approved list is subject to annual recertification and reappointment by the chief judge of a judicial circuit. The chief judge shall prescribe appropriate forms for application for inclusion on the list of certified process servers. A reasonable fee for the processing of any such application must be charged.

(2) The addition of a person's name to the list authorizes him or her to serve initial nonenforceable civil process on a person found within the circuit where the process server is certified when a civil action has been filed against such person in the circuit court or in a county court in the state. Upon filing an action in circuit or county court, a person may select from the list for the circuit where the process is to be served one or more certified process servers to serve initial nonenforceable civil process.

(3) Nothing herein shall be interpreted to exclude a sheriff or deputy or other person appointed by the sheriff pursuant to [s. 48.021](#) from serving process or to exclude a person from appointment by individual motion and order to serve process in any civil action in accordance with [Rule 1.070\(b\) of the Florida Rules of Civil Procedure](#).

**FLORIDA STATUTE § 48.29 – CERTIFICATION OF PROCESS SERVERS**

§ 48.29. Certification of process servers

(1) The circuit court administrator and the clerk of the court in each county in the circuit shall maintain the list of process servers approved by the chief judge of the circuit. Such list may, from time to time, be amended or modified to add or delete a person's name in accordance with the provisions of this section or [s. 48.31](#).

(2) A person seeking the addition of his or her name to the approved list in any circuit shall submit an application to the chief judge of the circuit or to the chief judge's designee on a form prescribed by the court. A reasonable fee for processing the application may be charged.

(3) A person applying to become a certified process server shall:

(a) Be at least 18 years of age;

(b) Have no mental or legal disability;

(c) Be a permanent resident of the state;

(d) Submit to a background investigation, which shall include the right to obtain and review the criminal record of the applicant;

(e) Obtain and file with his or her application a certificate of good conduct, which specifies there is no pending criminal case against the applicant and that there is no record of any felony conviction, nor a record of a conviction of a misdemeanor involving moral turpitude or dishonesty, with respect to the applicant within the past 5 years;

(f) If prescribed by the chief judge of the circuit, submit to an examination testing his or her knowledge of the laws and rules regarding the service of process. The content of the examination and the passing grade thereon, and the frequency and location at which such examination shall be offered shall be prescribed by the chief judge of the circuit. The examination, if any, shall be offered at least once annually;

(g) Execute a bond in the amount of \$ 5,000 with a surety company authorized to do business in this state for the benefit of any person wrongfully injured by any malfeasance, misfeasance, neglect of duty, or incompetence of the applicant, in connection with his or her duties as a process server. Such bond shall be renewable annually; and

(h) Take an oath of office that he or she will honestly, diligently, and faithfully exercise the duties of a certified process server.

(4) The chief judge of the circuit may, from time to time by administrative order, prescribe additional rules and requirements regarding the eligibility of a person to become a certified process server or to have his or her name maintained on the list of certified process servers.

(5) (a) An applicant who completes the requirements set forth in this section and whose name the chief judge by order enters on the list of certified process servers shall be designated as a certified process server.

(b) Each certified process server shall be issued an identification card bearing his or her

identification number, printed name, signature and photograph, the seal of the circuit court, and an expiration date. Each identification card shall be renewable annually upon proof of good standing and current bond.

(6) A certified process server shall place the information provided in [s. 48.031\(5\)](#) on the copy served. Return of service shall be made by a certified process server on a form which has been reviewed and approved by the court.

(7) (a) A person may qualify as a certified process server and have his or her name entered on the list in more than one circuit.

(b) A process server whose name is on a list of certified process servers in more than one circuit may serve process on a person found in any such circuits.

(c) A certified process server may serve foreign process in any circuit in which his or her name has been entered on the list of certified process servers for that circuit.

(8) A certified process server may charge a fee for his or her services.

**FLORIDA STATUTE § 48.31 – REMOVAL OF CERTIFIED PROCESS SERVERS;  
FALSE RETURN OF SERVICE**

§ 48.31. Removal of certified process servers; false return of service

(1) A certified process server may be removed from the list of certified process servers for any malfeasance, misfeasance, neglect of duty, or incompetence, as provided by court rule.

(2) A certified process server must be disinterested in any process he or she serves; if the certified process server willfully and knowingly executes a false return of service, he or she is guilty of a felony of the third degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#), and shall be permanently barred from serving process in this state.

**FLORIDA RULE OF CIVIL PROCEDURE 1.070 – PROCESS**



Florida Rules of Civil Procedure

Fla. R. Civ. P. 1.070 (2009)

[Review Court Orders which may amend this Rule.](#)

Rule 1.070. Process

(a) *Summons; Issuance.* --Upon the commencement of the action, summons or other process authorized by law shall be issued forthwith by the clerk or judge under the clerk's or the judge's signature and the seal of the court and delivered for service without praecipe.

(b) *Service; By Whom Made.* --Service of process may be made by an officer authorized by law to serve process, but the court may appoint any competent person not interested in the action to serve the process. When so appointed, the person serving process shall make proof of service by affidavit promptly and in any event within the time during which the person served must respond to the process. Failure to make proof of service shall not affect the validity of the service. When any process is returned not executed or returned improperly executed for any defendant, the party causing its issuance shall be entitled to such additional process against the unserved party as is required to effect service.

(c) *Service; Numerous Defendants.* --If there is more than one defendant, the clerk or judge shall issue as many writs of process against the several defendants as may be directed by the plaintiff or the plaintiff's attorney.

(d) *Service by Publication.* --Service of process by publication may be made as provided by statute.

(e) *Copies of Initial Pleading for Persons Served.* --At the time of personal service of process a copy of the initial pleading shall be delivered to the party upon whom service is made. The date and hour of service shall be endorsed on the original process and all copies of it by the person making the service. The party seeking to effect personal service shall furnish the person making service with the necessary copies. When the service is made by publication, copies of the initial pleadings shall be furnished to the clerk and mailed by the clerk with the notice of action to all parties whose addresses are stated in the initial pleading or sworn statement.

(f) *Service of Orders.* --If personal service of a court order is to be made, the original order shall be filed with the clerk, who shall certify or verify a copy of it without charge. The person making service shall use the certified copy instead of the original order in the same manner as original process in making service.

(g) *Fees; Service of Pleadings.* --The statutory compensation for making service shall not be increased by the simultaneous delivery or mailing of the copy of the initial pleading in conformity with this rule.

(h) *Pleading Basis.* --When service of process is to be made under statutes authorizing service on nonresidents of Florida, it is sufficient to plead the basis for service in the language of the statute without pleading the facts supporting service.

(i) *Service of Process by Mail.* --A defendant may accept service of process by mail.

(1) Acceptance of service of a complaint by mail does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

(2) A plaintiff may notify any defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request shall:

(A) be in writing and be addressed directly to the defendant, if an individual, or to an officer or managing or general agent of the defendant or other agent authorized by appointment or law to receive service of process;

(B) be dispatched by certified mail, return receipt requested;

(C) be accompanied by a copy of the complaint and shall identify the court in which it has been filed;

(D) inform the defendant of the consequences of compliance and of failure to comply with the request;

(E) state the date on which the request is sent;

(F) allow the defendant twenty days from the date on which the request is received to return the waiver, or, if the address of the defendant is outside of the United States, thirty days from the date on which it is received to return the waiver; and

(G) provide the defendant with an extra copy of the notice and request, including the waiver, as well as a prepaid means of compliance in writing.

(3) If a defendant fails to comply with a request for waiver within the time provided herein, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure is shown.

(4) A defendant who, before being served with process, timely returns a waiver so requested is not required to respond to the complaint until sixty days after the date the defendant received the request for waiver of service. For purposes of computing any time prescribed or allowed by these rules, service of process shall be deemed effected 20 days before the time required to respond to the complaint.

(5) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in subdivision (4) above, as if a summons and complaint had been served at the time of filing the waiver, and no further proof of service shall be required.

(j) *Summons; Time Limit.* --If service of the initial process and initial pleading is not made upon a defendant within 120 days after filing of the initial pleading directed to that defendant the court, on its own initiative after notice or on motion, shall direct that service be effected within a specified time or shall dismiss the action without prejudice or drop that defendant as a party; provided that if the plaintiff shows good cause or excusable neglect for the failure, the court shall extend the time for service for an appropriate period. When a motion for leave to amend with the attached proposed amended complaint is filed, the 120-day period for service of amended complaints on the new party or parties shall begin upon the entry of an order granting leave to amend. A dismissal under this subdivision shall not be considered a voluntary dismissal or operate as an adjudication on the merits under rule

1.420(a)(1).

**FLORIDA SECOND JUDICIAL CIRCUIT AO 2008-21 (2008)**

**IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA  
ADMINISTRATIVE ORDER NO. A-2008-21  
ADMINISTRATIVE ORDER REGARDING CERTIFICATION AND REGULATION OF  
CIVIL PROCESS SERVERS  
AND  
ORDER ESTABLISHING THE FIFTH CIRCUIT CERTIFIED CIVIL PROCESS  
SERVER REVIEW BOARD  
AND  
RESCINDING ADMINISTRATIVE ORDER NUMBER A92-25A-2**

**WHEREAS**, the number of applications for Certification as a Civil Process Server in the Fifth Circuit has increased dramatically; and

**WHEREAS**, the administrative burden of certification and regulation of Civil Process Servers pursuant to Section 48.25, et seq., Florida Statutes, has increased comparatively to the increase in the number of application for Certification as a Civil Process Server; and

**WHEREAS**, the Legislature of the State of Florida clearly intended to supplement service of process by various Sheriffs of Florida Counties with an alternate means of service of civil process by Certified Civil Process Servers when it enacted 48.25, et seq., Florida Statutes; and

**WHEREAS**, if this Court is to continue to exercise its discretionary power to certify and regulate Certified Civil Process Servers pursuant to 48.025, et seq., Florida Statutes, the procedures to be followed in the Fifth Judicial Circuit must be reformed and clarified; and

**WHEREAS**, in order to efficiently and uniformly ensure proficiency and professionalism in the service of civil process and in keeping with public trust and legal importance of proper service of process;

**NOW, THEREFORE, I, Daniel B. Mesritt, Sr.**, pursuant to the authority vested in me as Chief Judge of the Fifth Judicial Circuit of Florida under Florida Rule of Judicial Administration 2.2 15, and being more fully informed and advised in the premises, it is hereby

**ORDERED** as follows:

**I. Definitions & Authority:**

1) **"Certified Process Server"** means a natural person who has met the requirements for certification provided in Section 48.29, Florida Statutes and this Administrative Order, and who has been placed on the approved list of certified process servers by the Chief Judge of the Fifth Judicial Circuit.

2) **"Board"** means the Fifth Judicial Circuit Certified Civil Process Server Review Board, as established herein.

3) **Authority of process servers.** Placement of an individual's name on the approved list of Certified Civil Process Servers authorizes him or her to serve, initial non-enforceable civil process on a person found within the Circuit where the process server is certified when a civil action has been filed against such person in the Circuit or County Court in this State. The Chief Judge may certify a civil process server in a specified Court or Counties within the Circuit rather than Circuit-wide in the Chief Judge's discretion and/or upon request of the applicant.

**11. Purpose:**

This Administrative Order is intended to ensure proficiency and professionalism in the service of civil process, in keeping with the public trust and legal

importance of proper service of process.

**111. Fifth Judicial Circuit Certified Civil Process Sewer Review Board:**

- 1) **Board Composition:** The Fifth Judicial Circuit Certified Civil Process Server Review Board is hereby created to monitor the certification, conduct and professionalism of persons certified pursuant to this Administrative Order and Section 48.25, et seq., Florida Statutes. The Board shall be under the supervisory authority of the Chief Judge of the Fifth Circuit. The Board shall be composed of one (1) Certified Civil Process Servers, one (1) licensed attorney who is a member of the Florida Bar, one (1) representative of a Clerk of Court within this Circuit who is familiar with the service of process, one (1) representative of the law enforcement community in this Circuit who is familiar with the service of process, and one (1) additional individual to be determined by the Chief Judge. The Board shall be comprised of members as stated herein unless a member is otherwise appointed by the Chief Judge. All members shall be appointed by the Chief Judge of the Fifth Circuit. Service on the Board at the Chief Judge's request shall be a condition of continued certification for the Certified Civil Process Server.
- 2) **Officers: Quorum.** Annually, the Board shall elect one of its members to serve as chair and one to serve as vice-chair. The Chair shall notify the Chief Judge of its selections to these positions in writing. A majority of the Board shall constitute a quorum.
- 3) **Vacancies.** Any vacancy on the Board shall be filled by appointment of the Chief Judge. A person appointed to fill a vacancy shall serve for the remainder of the term of the member being replaced.
- 4) **Terms.** The initial terms of the Board members shall be as follows:
  - A. One ( 1 ) year: The first appointed Law Enforcement representative, the first representative of a Clerk of Court, and the first member of the Florida Bar appointed by the Chief Judge;
  - B. Two (2) years for all other first members appointed by the Chief Judge.Following the initial terms, all terms shall be three years. Board members shall be eligible for reappointment. However, no person shall serve more than two consecutive 3-year terms without prior approval by the Chief Judge.
- 5) **Duties.** The duties of the Board shall include the following:
  - A. The Board shall be responsible for the recommendation of certification and review of complaints and concerns regrading Certified Civil Process certification, receipt and review of complaints and concerns to Certified Civil Process Servers, receipt and review of responses of Certified Civil Process Servers to complaints, conduct of hearings, and recommendations of discipline of Certified Civil Process Servers to the Chief Judge.
  - B. The Board shall have the authority and discretion to adopt rules governing its operating procedures which shall be submitted to the Chief Judge for approval.
  - C. The Board may make recommendations to the Chief Judge regarding an amendment to the rules.
- 6) **Fees.** Applicants shall pay a first time application and testing fee of \$250.00

payable to the State of Florida. The annual renewal fee shall be \$150.00 and shall be submitted with the request for renewal of certification. All Fees are nonrefundable regardless of certification status.

7) **Records.** The Board, or member designated by the Chair of the Board shall maintain records and minutes of its meetings, hearings, and other official actions.

8) **Expenses.** Members of the Board shall serve without compensation.

#### **IV. Application for Certification.**

All Applicants seeking certification shall apply to the Board using the application form attached hereto as "Attachment A". The application and testing fee must be included with the application. Any application submitted that does not include all necessary fees or documentation will not be considered or processed.

The Board shall accept applications for certification during normal working hours throughout the year.

#### **V. Qualifications.**

Applicants must satisfy the following requirements to qualify for certification in the Fifth Circuit:

- A. Be at least 18 years of age;
- B. Have no mental or legal disability;
- C. Be a permanent resident of this State;
- D. Attest that they have read and become familiar with the laws and rules governing the service of process;
- E. Take and pass a written examination administered by the Court and approved by the Chief Judge;
- F. Submit to a background investigation, at the applicant's expense, which shall include any criminal record of the applicant;
- G. File with the Board a certificate of good conduct certifying:
  - a. there is no record of any pending criminal case, whether felony or misdemeanor, against the applicant;
  - b. there is no record of any felony conviction for which civil rights have not been restored;
  - c. there is no record of conviction of the applicant of a misdemeanor involving moral turpitude or dishonesty within the preceding five ( 5 ) years;
- H. Take an Oath to Office that he/she will honestly, diligently, and faithfully exercise the duties of a Certified Process Server;
- I. Execute and file with the Board a bond in the amount of \$5,000.00 with a surety company authorized to do business in this State for the benefit of any person injured by misfeasance, malfeasance, neglect of duty, or incompetence of the applicant in connection with his/her duties as a process server.

#### **VI. Examination.**

The Court shall develop and administer a written examination to all applicants seeking Certified Civil Process Server certification, to ensure that such applicants possess a satisfactory level of understanding and knowledge of the laws and rules regarding the service of process. The contents of the examination shall be subject

to the approval of the Chief Judge. A passing score shall be no less than 80% of the questions answered correctly. The examination shall be administered not less than once a year, at such time and place as may be designated by the Court. Notice of the time and place of the test shall be provided by the Court to all applicants.

#### **VII. Issuance of Certification.**

Upon satisfactory completion of the specified prerequisites, the Board shall recommend the applicant to the Chief Judge for entry on the list of Certified Civil Process Servers. If the Chief Judge is satisfied that the conditions have been adequately met, the Chief Judge shall issue an Order placing the applicant on the list of certified process servers and provide a copy of the Order to the Court Administrator and the Clerk of the Court for each County within the Fifth Circuit. The Court Administrator and the Clerk of the Court for each County shall maintain a list of Certified Process Servers based upon the Court's Order.

#### **VIII. Identification Card.**

Upon certification as a Certified Civil Process Server, the applicant shall be issued an identification card by the Court in the form prescribed by Section 48.29(5)(b), Florida Statutes. Costs incident to the preparation and issuance of the card shall be paid by the applicant. Each identification card shall be renewable annually upon proof of good standing, current bond, and payment of the renewal fee set out in Section 111 (6) above.

#### **IX. Renewal of Certificate.**

**A. Annual renewal.** Each Certified Civil Process Server shall pay an annual certificate renewal fee in the amount of \$150.00. A certificate shall be suspended automatically upon non-payment, but shall be reinstated upon application to the Board, accompanied by payment, made within sixty (60) days of the date of the suspension. Upon expiration of the sixty (60) day grace period the initial application fee of \$250.00 must be paid and the written examination must be retaken. Thereafter any request for reinstatement must be made pursuant to sections IV, V, and VI of this Order.

**B. Biennial testing.** To assure that Certified Civil Process Servers have maintained adequate knowledge of current laws and rules applicable to service of process, renewal shall require the successful completion of the written examination within two years of the initial certification. A passing score for renewal shall be no less than 80% of the questions answered correctly. The renewal examination may be given more frequently and at different locations than the initial application. The Board may require every Certified Civil Process Server to submit to the written examination at any time prior to the renewal of his/her certification.

**C.** The Board shall take action as required herein no later than March 15 of the then current year for certification effective April 1 of that same year. All certifications shall be valid for one ( 1 ) year, except as set forth in Sections X through XIV hereof.

#### **X. Prohibited Conduct, Generally**

The following conduct is prohibited and may lead to disciplinary action:

- a. accepting employment in which the Certified Civil Process Server has an interest, or continuing employment after becoming aware of



the existence of an interest;

- b. making false or misleading statements or misrepresentations regarding other Certified Civil Process Servers in this Circuit to any person with the intent to obtain business as a result of such false statements or misrepresentations or to deprive the subject Certified Civil Process Server from continued business;
- c. making false statements or omissions to any person with regard to the Certified Civil Process Server's identity or legal authority in order to effect service of process;
- d. . continuation of false or deceptive advertising or other activity intended to generate business after receipt of a cease and desist letter from the Board;

use of inappropriate, unprofessional, threatening or intimidating tactics to obtain client lists or other business records from other Certified Civil Process Servers' offices or from client's offices;

alcohol or drug abuse, physical incapacity, or mental instability which does or is likely to interfere with the performance of the duties of a Certified Civil Process Server;

misrepresentation as to the identity of the party receiving service or the process server who actually delivered the service. (Note that knowingly executing a false return of service is a felony of the third degree);

obtaining the certification by fraudulent means;

having his/her certification revoked in another state and/or circuit;

has been the subject of a court order adjudicating the certified civil process server delinquent on his/her child support obligation

accepting a gratuity, gift or favor that might or appears to interfere or influence professional judgment;

failing to maintain honesty in all professional dealings;

making malicious or intentionally false statements about a colleague;

misrepresenting one's own professional qualifications;

submitting fraudulent information on any document in connection with professional activities;

misrepresenting one's own identity in order to avoid service of process;

any other practices which constitute malfeasance, misfeasance, neglect of duty, or incompetence.

#### **XI. Conduct Warranting Revocation of Certification.**

A certificate issued pursuant to these rules may be revoked for any of the following reasons:

- a. Conviction of a felony or of a misdemeanor involving moral turpitude, dishonesty, or false statement;
- b. Fraud, dishonesty or corruption which is related to the functions and duties of a Certified Civil Process Server;
- c. Fraud or misrepresentation in obtaining or renewing certification;

- d. Nonpayment of renewal fees;
- e. Engaging in any of the prohibited activities listed in Subsection XI above.

## **XII. Disciplinary Procedures.**

**A. Initiation.** Disciplinary proceedings may be initiated before the Board either by a signed written complaint asserting or alleging a violation of these rules or by the Board on its own motion.

**B. Probable Cause; Notification.** If a majority of the Board finds probable cause to believe that a violation of these rules has occurred it shall send written notice thereof, identifying the rule or rules alleged to have been violated, to the Certified Civil Process Server by certified United States Mail to the last mailing address on file with the Board. The Board shall further notify the Chief Judge of its findings, who shall have the authority to temporarily suspend the certification of the Certified Civil Process Server pending the outcome of the disciplinary process set forth herein.

**C. Response.** Within thirty (30) calendar days of the issuance of a finding of probable cause, the Certified Civil Process Server shall file a written response with the Board. If the Certified Civil Process Server does not timely respond, the violations identified in the finding of probable cause shall be deemed admitted. An untimely response will be deemed a failure to respond.

**D. Board Review.** Within sixty (60) calendar days after the filing of the written response to the finding of probable cause or within sixty (60) calendar days following the expiration of the time within which to file a response (if none is filed or filed untimely), the Board shall review the complaint, the finding of probable cause, the response thereto (if any) and any other pertinent materials or information and decide whether to :

- a. dismiss the proceeding;
- b. issue a proposed disposition; or
- c. set a hearing.

The Board shall promptly send written notification of its decision to the Certified Civil Process Server by certified United States Mail to the last address on file with the Board.

**E. No Hearing Demanded.** A proposed disposition issued pursuant to subdivision (D)(b) above shall become final unless the Certified Civil Process Server demands a hearing on the decision within fifteen (15) calendar days from the date of the decision.

**F. Timing of Hearing.** Absent good cause, no hearing shall take place less than thirty (30) days or more than ninety (90) days from the date of notice pursuant to subdivision (D)(c) above or of the Certified Civil Process Server's demand pursuant to subdivision (E) above.

**G. Identity of Complainant.** Upon written request filed with the Board after a hearing has been scheduled the Board shall promptly reveal to the Certified Civil Process Server the identity of the complaining party.

**14. Legal Representation.** The Certified Civil Process Server may be represented by an attorney at any stage of the proceeding. The Certified

Civil Process Server shall be responsible for all of his or her own costs and expenses associated with the hearing and proceedings including attorney fees.

### **XIII. Disciplinary Hearings.**

**A. Pre-Hearing Discovery.** Pre-hearing discovery shall not be permitted unless expressly authorized by the Board in response to a written request.

**B. Rules of Evidence.** Strict rules of evidence shall not apply. The Board may, in its discretion, consider any evidence presented including affidavits, giving such evidence the weight it deems appropriate.

**C. Hearings to be Recorded.** The Board shall ensure that all hearings are recorded by any means deemed appropriate by the Board.

**D. Hearing Procedure.** At the hearing, both the Board and the Certified Civil Process Server shall be afforded the opportunity to introduce documents and other relevant evidence and to elicit sworn testimony.

**E. Board Deliberations.** Following the presentation of evidence, the Board shall deliberate regarding its decision. Such deliberations shall take place in private.

**F. Finality of Decision; Rehearing.** Unless the Certified Civil Process Server files a request for rehearing within ten (10) calendar days from the date of the decision, the Board's decision shall be deemed final and forwarded to the Chief Judge as a recommendation of disposition. If a timely request for rehearing is filed with the Board, the decision of the Board shall not be forwarded to the Chief Judge until the request has been disposed of by written decision. A copy of the decision shall be sent to the Certified Civil Process Server by certified United States Mail to the last address on file with the Board. Thereafter, the written decision on the request for rehearing and the decision of the Board shall be forwarded to the Chief Judge.

### **XIV. Disciplinary Dispositions.**

**A. Burden of Proof.** If the Board finds that there is clear and convincing evidence that the Certified Civil Process Server has violated one or more of the rules as set forth herein, it shall recommend to the Chief Judge such discipline as it may deem appropriate, consistent with this Order.

**B. Vote Required; Notification.** All decisions of the Board shall be made by majority vote, in writing and if adverse to the Certified Civil Process Server, shall contain factual findings supporting the decision. A copy of the decision shall be sent to the Certified Civil Process Server by certified United States mail.

**C. Sanctions.** Discipline recommended by the Board and imposed by the Chief Judge may consist of one or more of the following:

1. A reprimand from the Board;

...

11. A reprimand from the Chief Judge;

... 111. The imposition of costs and expenses incurred by the Board in connection with the proceeding, including costs of recording and investigation;

- iv. Restitution;
- v. Requiring the Certified Civil Process Server certification examination be successfully taken, or retaken;
- vi. Limiting the geographic scope of the practice by county;
- vii. Suspension of certification not to exceed one (1) year, after which the individual may seek reinstatement of his/her certification as provided in Section (IX) hereof and upon any other conditions the Chief Judge may deem appropriate;

...

v~ii. Revocation of certification.

D. If, after reviewing the Board's recommendation and factual findings, the Chief Judge determines that sanctions are appropriate, the Chief Judge shall enter an Order Imposing Sanctions. The Office of the Court Administrator and the Clerk of the Court for each County shall update the list of Certified Civil Process Servers with notations or removals based on these Court orders.

#### **XV. Confidentiality of Disciplinary Proceedings.**

When a disciplinary proceeding is either dismissed or results in a reprimand from the Board, all records of the proceeding shall remain confidential; otherwise all such records shall become public record when the Chief Judge makes a final disposition.

#### **XVI. Review of Adverse Disciplinary Dispositions.**

Within thirty (30) days of a final adverse disciplinary disposition after a hearing the Certified Civil Process Server may seek review by common law certiorari to the Fifth District Court of Appeals pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

#### **XVII. Reinstatement.**

A Certified Civil Process Server whose certificate has been revoked may apply in writing for reinstatement. Such request shall explain why the applicant believes that he/she should be reinstated and shall include a renewal fee of \$150.00. Whether to recommend to the Chief Judge for or against such a request shall rest in the sole and absolute authority and discretion of the Board. The Board may recommend such conditions upon reinstatement as it deems appropriate.

#### **XVIII. Effective Date.**

The rules promulgated by this Order shall take effect immediately upon the entry thereof.

**ADMINISTRATIVE ORDER NUMBER A92-25A-2 IS HEREBY RESCINDED.**

**IT IS SO ORDERED** in Chambers, in Brooksville, Hernando County, Florida, on this

) Today of July, 2008.

**CHIEF JUDGE**

**FIFTH JUDICIAL CIRCUIT**

**FIFTH JUDICIAL CIRCUIT**

**CERTIFIED PROCESS SERVER APPLICATION**

**PERSONAL DATA**

**NAME**

Last First Initial

ADDRESS

Number and Street City State Zip

MAILING ADDRESS

P.O. Box City State Zip

TELEPHONE (B) (H)

Request posting of mailing address and business phone number on the certified process server web page. Yes **No**

SOCIAL SECURITY NUMBER

CITIZENSHIP

IF ALIEN, check which type of work authorization you have:

Alien Registration Form I- 1 5 1

Refugee Status Form 1-94

File Number of Form

If NATURALIZED, record the following forms of identification:

Naturalization Certificate Number

U.S. Passport Number

Voter's Registration Number

ARE YOU 18 OR MORE YEARS OLD?

DATE OF BIRTH

DO YOU HAVE ANY MENTAL OR LEGAL DISABILITIES?

If so list:

ARE YOU A PERMANENT FLORIDA RESIDENT?

HAVE YOU EVER BEEN A MEMBER OF THE U.S. ARMED SERVICES?

YES NO

Type of discharge: HONORABLE GENERAL OTHER

If other, explain:

**RESIDENCY DATA**

PLEASE LIST YOUR RESIDENCES FOR THE PAST FIVE YEARS IN REVERSE CHRONOLOGICAL ORDER.

Number & Street City State Zip

Number & Street City State Zip

Number & Street City State Zip

Number & Street City State Zip

Number & Street City State Zip

EDUCATIONAL DATA

PLEASE LIST THE SCHOOLS WHICH YOU ATTENDED IN CHRONOLOGICAL ORDER BEGINNING WITH HIGH SCHOOL.

**School Level** Name

Number & Street City State Zip

Dates Attended

Graduate Y/N

Major Degree

**School Level Name**

Number & Street City . Zip

Dates Attended

Graduate Y/N Major Degree

**School Level Name**

Number & Street City Zip

Dates Attended Graduate Y/N Major Degree

**EMPLOYMENT DATA**

PLEASE LIST YOUR THREE MOST RECENT EMPLOYERS IN REVERSE  
CHRONOLOGICAL ORDER

**Employer**

Number & Street City Zip

Dates Employed Position

**Employer**

Number & Street City Zip

Dates Employed Position

**Employer**

Number & Street

City Zip

Dates Employed Position

**OCCUPATIONAL / PROFESSIONAL LICENSES OR CERTIFICATES**

TYPE NUMBER

DATE OBTAINED

TYPE NUMBER

DATE OBTAINED RENEWAL DATE

**DRIVER'S OR CHAUFFEUR'S LICENSE**

TYPE

Number

State

**BACKGROUND INFORMATION**

**PERSONAL DATA**

CITIZENSHIP

BIRTH DATE

BIRTH PLACE

RACE HEIGHT WEIGHT

HAIR COLOR EYE COLOR

DO YOU HAVE ANY IDENTIFYING MARKS? IF SO, PLEASE LIST THE  
TYPE OF MARK AND ITS LOCATION

**CRIMINAL HISTORY**

PLEASE LIST ANY OFFENSE FOR WHICH YOU HAVE BEEN CONVICTED, OR  
ANY CHARGE AGAINST YOU CURRENTLY.

Offense County State Date

Offense County State Date

Offense County

State Date

Offense County State Date

Offense County

State Date

Offense County State Date

I HEREBY CERTIFY that all information provided on this application is true, including any information implied by omission. I understand that any misinformation supplied herein shall result in an immediate forfeiture of any opportunity to become or remain a certified process server in the Fifth Judicial Circuit.

Signature Date

FIFTH JUDICIAL CIRCUIT

CERTIFIED PROCESS SERVER

CERTIFICATE OF GOOD CONDUCT

STATE OF FLORIDA

COUNTY OF

Before me this day personally appeared who, being first duly sworn, deposes and says:

1. There is no criminal case pending against him/her.
2. There is no record of any felony conviction against him/her.
3. There is no record of a conviction of a misdemeanor involving moral turpitude or dishonesty against him/her within the past 5 years.

Signature

Subscribed and sworn to before me this day of ,

Personally known or produced identification type of identification produced

Notary Public

STATE OF FLORIDA

COUNTY OF

OATH OF OFFICE OF CERTIFIED PROCESS **SERVER**

I, , a citizen of the state of Florida and the United States of America, being appointed a certified process server within the jurisdiction of the Fifth Judicial Circuit of the state of Florida, do hereby solemnly swear or affirm that I will support the constitution of the United States and of the state of Florida, and that I will faithfully execute my duties as certified process server pursuant to the provisions of §48, Florida Statutes.

Florida Drivers License Number Signature

Subscribed and sworn to before me this day of

Personally known or produced identification type of identification produced

Notary Public

**AFFIDAVIT OF SERVICE**

STATE OF FLORIDA COUNTY OF COURTPlaintiff

CASE NUMBER:

vs.

Defendant

Before me, the undersigned authority, personally appeared , being first duly sworn, deposes and says:

1. Affiant is not a party to nor interested in the outcome of the above case and is over the age of 18 years.

2. Affiant received the attached

3. Affiant personally served same upon  
who was then at  
on And M.

4. I have been properly certified as a process server by Administrative Order 92-25A-2 and am currently certified to serve process pursuant to the provisions of the order.

INDIVIDUAL SERVICE: By delivering to the within named person a true copy of the process, with the date and hour of service endorsed by me. At the same time, I delivered to the within named person a copy of the complaint, petition, or other initial pleading or paper.

SUBSTITUTE SERVICE: By leaving a true copy of this process, with the date and hour of service endorsed thereon by me, and a copy of the complaint, petition, or other initial pleading or paper, at the within named person's place of abode with any person residing therein who is **15** years of age or older and informing the person of the contents.

Name Relationship

CORPORATE SERVICE: By delivering a true copy of this process with the date and hour of service endorsed thereon by me and a copy of the complaint, petition, or other initial pleading or paper to:

Name: Title

Corporate Name As president, vicepresident,  
or other head of the corporation; or in their absence, the cashier, treasurer,  
secretary, or general manager; or in their absence, any officer or business agent residing in the state; or the resident agent; or and employee at the corporation's place of business due to failure of the registered agent to comply with §48,09 1 and informing them of their contents.

POSTED RESIDENTIAL: By attaching a copy of this process, together with a copy of any attachments, to a conspicuous place on the property described within.

Neither the tenant(s) nor a resident 15 years of age or older could be found at the tenant(s) usual place of residence, after 2 attempts at least 6 hours apart.

OTHER: By delivering a true copy of this process, with any attachments provided,

NON-SERVICE: And hereby return same unserved on  
for the reason that after diligent search and inquiry, the within named could not be found in County, Florida.

Affiant

Address

Sworn to and subscribed before me this day of ,

by affiant who is personally known to me or produced identification. Type of identification produced

Notary Public

### **PROCESS SERVER'S BOND**

Bond No.

KNOW ALL MEN BY THESE PRESENTS:

That we, , as principal, and



a corporation duly licensed for the purpose of making, guaranteeing or becoming a sole surety upon bonds, or undertakings, required by the laws of the state of Florida, as Surety are held and firmly bound unto the State of Florida, Fifth Judicial Circuit, in the sum of \$5,000, lawful money of the United States of America, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH. THAT

WHEREAS, if the above bounded principal shall well, truly and faithfully comply with the provisions of statutes in the State of Florida, then this obligation shall be null and void, otherwise to remain in full force and effect.

The surety hereunder may relieve itself from liability to the extent and in the manner set forth in the provisions of the statutes governing the termination by the surety of liability under the bond provided; however, that in no event shall it be relieved from liability as respects transactions occurring before the date of termination.

If the surety shall so elect this bond may be canceled by giving 30 days written notice to obligee.

This bond shall be in effect from and expires on

Signed and sealed this day of ,

Principal (print or type name) Name of Surety

By:

Signature of Principal Attorney in fact

Address of Surety

## GEORGIA PROCESS SERVER REQUIREMENTS

Georgia state law provides that:

process shall be served by the sheriff of the county where the action is brought or where the defendant is found, or by such sheriff's deputy, or by the marshal or sheriff of the court, or by such official's deputy, or by any citizen of the United States specially appointed by the court for that purpose, *or by someone who is not a party and is not younger than 18 years of age and has been appointed as a permanent process server by the court in which the action is brought.*

Ga. Code. Ann. § 9-11-4(c) (summons; by whom served) (emphasis added).

We did not locate any court rules regarding procedures for application and appointment for permanent process servers. We did, however, locate on the Internet information (including forms and procedures) for appointment to become permanent process servers with several state courts.

In addition, state legislation has been proposed in the Georgia State Legislature to establish statewide, biannual registration of permanent process servers. The proposed legislation would require the Judicial Council of Georgia to oversee the registration system. Applicants would be required to undergo criminal background checks, pass a test administered by the Administrative Office of the Courts, pass a review and be approved by the Judicial Council, and take an oath. (See Binder, copies of proposed legislation.)

### **Appended Applicable Provision:**

- Georgia Code Annotated § 9-11-4 – Process

### **Appended Applicable Materials:**

- Permanent Process Server Application – State Court of Clayton County
- Permanent Process Server Application and Applicable Materials – Cobb County Superior Court
- Permanent Process Server Application and Applicable Materials – Paulding Judicial Circuit Superior Court
- Proposed Georgia Senate bill to establish state-wide registration requirement for permanent process servers
- Proposed Georgia House bill to establish state-wide registration requirement for permanent process servers

**Georgia Code Annotated § 9-11-4 – Process**

OFFICIAL CODE OF GEORGIA ANNOTATED

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TITLE 9. CIVIL PRACTICE

CHAPTER 11. CIVIL PRACTICE ACT

ARTICLE 2. COMMENCEMENT OF ACTION AND SERVICE

[Go to the Georgia Code Archive Directory](#)

O.C.G.A. § 9-11-4 (2009)

§ 9-11-4. Process

(a) *Summons -- Issuance.* Upon the filing of the complaint, the clerk shall forthwith issue a summons and deliver it for service. Upon request of the plaintiff, separate or additional summons shall issue against any defendants.

(b) *Summons -- Form.* The summons shall be signed by the clerk; contain the name of the court and county and the names of the parties; be directed to the defendant; state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address; and state the time within which this chapter requires the defendant to appear and file appropriate defensive pleadings with the clerk of the court, and shall notify the defendant that in case of the defendant's failure to do so judgment by default will be rendered against him or her for the relief demanded in the complaint.

(c) *Summons -- By whom served.* Process shall be served by the sheriff of the county where the action is brought or where the defendant is found, or by such sheriff's deputy, or by the marshal or sheriff of the court, or by such official's deputy, or by any citizen of the United States specially appointed by the court for that purpose, or by someone who is not a party and is not younger than 18 years of age and has been appointed as a permanent process server by the court in which the action is brought. Where the service of process is made outside of the United States, after an order of publication, it may be served either by any citizen of the United States or by any resident of the country, territory, colony, or province who is specially appointed by the court for that purpose. When service is to be made within this state, the person making such service shall make the service within five days from the time of receiving the summons and complaint; but failure to make service within the five-day period will not invalidate a later service.

**Permanent Process Server Application – State Court of Clayton County**

# STATE COURT OF CLAYTON COUNTY

## Permanent Process Server Application

*Harold R. Banke Justice Center ~ 9151 Tara Blvd, Suite 3CA01~ Jonesboro, Georgia 30236 1*

### **Application Overview and Requirements**

A completed application packet and all items on the checklist should be submitted to the State Court of Clayton County to ensure certification in a timely manner. If you are **applying for renewal of previous appointment, the entire application must be completed.** The Court will review all information submitted for approval and an order bearing the Chief Judge's signature will establish all official appointments. Upon approval, applicants will receive correspondence indicating his or her appointment status as a permanent process server for the Clayton County State Court. All requirements must be met on behalf of the applicant, including submission to a criminal background check. The Court reserves the right to deny the request of any applicant as it deems appropriate in the interest of the State Court of Clayton County and the citizens within this jurisdiction.

### **Applicant Checklist:**

- Must submit an application for review or renewal ( Effective 10/2009)
- Must be 18 years of age
- Must submit a recent criminal background check (within one (1) year of request)
- Must not have committed any serious criminal offenses
- Must attest that he/she does not suffer from any debilitating mental or legal disability that would impede appointment.
- Must be of good character and/or in good standing with the Georgia Bar (Bar number required).
- Must submit a petition to the Court for appointment.

### **NOTIFICATION PROCESS**

Once the information is reviewed and a decision regarding appointment has been made, a letter will be forwarded to the petitioner's attention confirming his or her status as a Permanent Process Server. The designated status will remain effective through December of the official year of appointment.

### **APPLICATION SUBMISSION**

Applications and other requested information can be faxed to 770.478.2381 or mailed to:

#### **Court Administration**

Attention: Permanent Process Server Review Panel  
9151 Tara Blvd, Suite 3CA01  
Jonesboro, Georgia 30236

If you have any questions, please do not hesitate to contact Court Administration at (770) 477-3414.

**STATE COURT OF CLAYTON COUNTY**  
**Permanent Process Server Application**

*Harold R. Banke Justice Center ~ 9151 Tara Blvd, Suite 3CA01~ Jonesboro, Georgia 30236 1*

**PLEASE TYPE OR PRINT IN BLACK INK**

**NAME:** \_\_\_\_\_  
Last First Middle

**ADDRESS:** \_\_\_\_\_

**PREVIOUS ADDRESS** (If at present address less than 5 years):  
\_\_\_\_\_

**DATE OF BIRTH:** \_\_\_\_\_

**PHONE NUMBERS:** Home (\_\_\_\_) \_\_\_\_\_ Work (\_\_\_\_) \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**EDUCATION:**

**HIGH SCHOOL**

Name of School: \_\_\_\_\_

Address of School: \_\_\_\_\_

Date of Leaving: \_\_\_\_\_ Did you Graduate: \_\_\_\_ Yes \_\_\_\_ No

Highest grade of school completed: \_\_\_\_\_

**COLLEGE, UNIVERSITY OR TECHNICAL SCHOOL**

Name of School: \_\_\_\_\_

Address of School: \_\_\_\_\_

Dates Attended: From \_\_\_\_\_ To \_\_\_\_\_

Hours Earned Quarter/Semester: \_\_\_\_\_

Degree or Certificate Received: \_\_\_\_\_ Year Awarded: \_\_\_\_\_

# STATE COURT OF CLAYTON COUNTY

## Permanent Process Server Application

*Harold R. Banke Justice Center ~ 9151 Tara Blvd, Suite 3CA01~ Jonesboro, Georgia 30236 3*

### EMPLOYMENT RECORD:

Employing Agency or Institution: \_\_\_\_\_

Address: \_\_\_\_\_

Name and Title of Immediate Supervisor: \_\_\_\_\_

Your Job Title: \_\_\_\_\_

Date Employed: From \_\_\_\_\_ To \_\_\_\_\_

Reason for Leaving: \_\_\_\_\_

### ADDITIONAL EMPLOYMENT HISTORY:

Employing Agency or Institution: \_\_\_\_\_

Date Employed: From \_\_\_\_\_ To \_\_\_\_\_

### VIOLATIONS OF THE LAW:

The following questions have to do with violations of the law. A conviction for a violation does not automatically mean that you cannot be appointed. Give all pertinent facts so that a decision can be made. In answering these items, you may omit minor traffic violations.

a. Have you ever been convicted of an offense against the law? \_\_\_\_\_ Yes \_\_\_\_\_ No

b. Have you ever been convicted of an offense against the law while in military service? \_\_\_\_\_ Yes  
\_\_\_\_\_ No

c. Do you have any conviction pursuant to adjudication in a juvenile court, a youthful offender act or a first offender act? \_\_\_\_\_ Yes \_\_\_\_\_ No

If the answer to any of the above items is "YES", give details below. For each offense, please show the date, charge, place, court, and action taken. Attach extra sheets if necessary.

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**STATE COURT OF CLAYTON COUNTY**  
**Permanent Process Server Application**

*Harold R. Banke Justice Center ~ 9151 Tara Blvd, Suite 3CA01~ Jonesboro, Georgia 30236 4*

**CERTIFICATION**

I certify that all information given in this biographical sketch is true and correct to the best of my knowledge and belief. I hereby authorize Clayton County State Court to verify any information contained in this application or supporting supplements to this document. I understand the State Court has the **DISCRETION TO WITHHOLD OR REVOKE CERTIFICATION OF A PROCESS SERVER EVEN WHEN ADJUDICATION HAS BEEN WITHHELD, BASED ON THE NATURE OF THE OFFENSE.**

Signature:\_\_\_\_\_ Date:\_\_\_\_\_

**ENDORSEMENT**

The undersigned member in good standing of the State Bar of Georgia hereby endorses the above applicant to be appointed as a permanent process server of Clayton County State Court and attests to such applicant's good character, honesty and integrity.

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Attorney at Law

Georgia State Bar Number\_\_\_\_\_

# STATE COURT OF CLAYTON COUNTY

## Permanent Process Server Application

*Harold R. Banke Justice Center ~ 9151 Tara Blvd, Suite 3CA01~ Jonesboro, Georgia 30236*

### STATEMENT OF POLICY

#### REGARDING THE CONDUCT OF PERMANENT PROCESS SERVERS

Service of process is the first contact that many individuals will have with the court system. Legal proceedings are often stressful and upsetting to the parties involved. In order to respect the rights of the public and to promote efficient, orderly service of process, the Clayton County State Court has adopted this Statement of Policy.

It is the policy of the Clayton County State Court that Permanent Process Servers conduct themselves at all times with the utmost professionalism and treat the parties to be served with dignity and courtesy.

In order to achieve these goals, the Court requires that the following specific rules be observed by Permanent Process Servers:

1. Process servers shall treat parties to be served with respect and courtesy. As such, process servers should refrain from behaving in a threatening or abusive manner and should avoid physical contact with the parties.
2. Process servers should refrain from using threatening or vulgar language while serving process.
3. Process servers should refrain from attempting to forcibly enter the home or business or other property of a party to be served.
4. Process servers shall not serve process while they are under the influence of alcohol or drugs.
5. Process servers shall not carry weapons or firearms while serving process except to the extent authorized by law.

I have read and understand the foregoing Statement of Policy Regarding Conduct of Permanent Process Servers, and I agree to comply with the specific rules as well as the general intent of the statement. I understand that a violation of these rules can lead to my removal from the list of Permanent Process Servers for Clayton County State Court.

---

Signature

---

Date

**Permanent Process Server Application and Applicable Materials – Cobb County Superior Court**

## Cobb County Superior Court Administration

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### **Permanent Process Server**

Qualifications to become a Permanent Process Server

Applicants:

- Must submit an application.
- Must be endorsed by a member of the State Bar of Georgia in good standing, to have good character, honesty and integrity.
- Be at least 18 years of age.
- Must consent to a background check.
- Must have not committed any serious criminal offense.
- The application must be approved by the Court Administrator.

Once the application has been approved, your order will be mailed to you and it will be in effect through December of the year you applied. If you have any questions, please do not hesitate to contact Kimberley Hicks at (770) 528-1811.

Print and fax the application and form to 770-528-1817 or Mail to:

**Superior Court Administration**

Attn: Kim Hicks

30 Waddell St.

Marietta, GA 30090-9642

# **Superior Court of Cobb County**

## **Permanent Process Server Letter**

**To:** Prospective Permanent Process Servers

**From:** Kimberley L. Hicks, Public Services Manager

**Date:** June 7, 2006

**RE:** Permanent Process Server Program

Attached you will find an application to become a process server for Cobb County Superior Court. The qualifications are as follows:

1. Must submit an application,
2. Must be endorsed by a member of the State Bar of Georgia in good standing to have good character, honesty and integrity,
3. Be at least 18 years of age,
4. Must consent to a background check and must have not committed any serious criminal offenses,
5. The application must be approved by the Court Administrator.

Once the application has been approved, your order will be mailed to you and it will be in effect through January 4, 2008.

If you have any questions, please do not hesitate to contact Kimberley Hicks at (770) 528-1811.

**Superior Court of Cobb County**  
**PERMANENT PROCESS SERVER APPLICATION FORM**

PLEASE TYPE OR PRINT IN BLACK INK

1. NAME:

\_\_\_\_\_

Last	First	Middle
------	-------	--------

2. ADDRESS: \_\_\_\_\_

3. PREVIOUS ADDRESS (If at present address less than 5 years):

\_\_\_\_\_

4. SOCIAL SECURITY NUMBER: \_\_\_\_\_

5. DATE OF BIRTH: \_\_\_\_\_

6. PLACE OF BIRTH: \_\_\_\_\_

7. PHONE NUMBERS: Home(\_\_\_\_) \_\_\_\_\_ Work(\_\_\_\_) \_\_\_\_\_

8. EDUCATION:

**HIGH SCHOOL**

Name of School: \_\_\_\_\_

Address of School: \_\_\_\_\_

Date of Leaving: \_\_\_\_\_ Did you Graduate: yes \_\_\_\_ no \_\_\_\_

Highest grade of school completed: \_\_\_\_\_

**COLLEGE OR UNIVERSITY**

Name of School: \_\_\_\_\_

Address of School: \_\_\_\_\_

Dates Attended: From \_\_\_\_\_ To \_\_\_\_\_

Hours Earned Quarter/Semester: \_\_\_\_\_

Degree: \_\_\_\_\_ Year Degree Awarded: \_\_\_\_\_  
Major: \_\_\_\_\_

**Superior Court of Cobb County**  
**PERMANENT PROCESS SERVER APPLICATION FORM**

Name of School: \_\_\_\_\_

Address of School: \_\_\_\_\_

Dates Attended: From \_\_\_\_\_ To \_\_\_\_\_

Hours Earned Quarter/Semester: \_\_\_\_\_

Degree: \_\_\_\_\_ Year Degree Awarded: \_\_\_\_\_

Major: \_\_\_\_\_

**BUSINESS, TRADE, TECHNICAL SCHOOLS AND OTHER TRAINING**

Name of School: \_\_\_\_\_

Address of School: \_\_\_\_\_

Dates Attended: From \_\_\_\_\_ To \_\_\_\_\_ No. of Hours Per Week: \_\_\_\_\_

Certificates Received: \_\_\_\_\_

Subject Taken: \_\_\_\_\_

**9. EMPLOYMENT RECORD:**

Name of Employing Agency, Company or Institution: \_\_\_\_\_

Address: \_\_\_\_\_

Name and Title of Immediate Supervisor: \_\_\_\_\_

Your Job Title: \_\_\_\_\_

Description of your duties and responsibilities:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date Employed: From \_\_\_\_\_ To \_\_\_\_\_

Reason for Leaving: \_\_\_\_\_



**Superior Court of Cobb County**  
**PERMANENT PROCESS SERVER APPLICATION FORM**

Name of Employing Agency, Company or Institution:\_\_\_\_\_

Address:\_\_\_\_\_

Name and Title of your Immediate Supervisor:\_\_\_\_\_

Your Job Title:\_\_\_\_\_

Description of your duties and responsibilities:\_\_\_\_\_

\_\_\_\_\_

Date Employed: From\_\_\_\_\_ To\_\_\_\_\_

Reason for Leaving:\_\_\_\_\_

\_\_\_\_\_

**10. VIOLATIONS OF THE LAW:**

The following questions have to do with violations of the law. A conviction for a violation does not automatically mean that you cannot be appointed. Give all pertinent facts so that a decision can be made. In answering these items, you may omit minor traffic violations.

a. Have you ever been convicted of an offense against the law? Yes\_\_\_ no\_\_\_

b. Have you ever been convicted of an offense against the law while in military service?  
Yes\_\_\_ no\_\_\_

c. Was any conviction pursuant to an adjudication in a juvenile court, a youthful offender act or a first offender act? Yes\_\_\_ no\_\_\_

If the answer to any of the above items is "YES", give details below. Show for each offense the date, charge, place, court, and action taken. Attach extra sheets if necessary.

\_\_\_\_\_  
\_\_\_\_\_

**Superior Court of Cobb County**  
**PERMANENT PROCESS SERVER APPLICATION FORM**

**11. REFERENCES:**

Names and addresses of two (2) persons who have knowledge of your character and qualifications and whom we may contact (Not relatives or former employers)

Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

**12. CERTIFICATION:** I certify that all information given in this biographical sketch is true and correct to the best of my knowledge and belief. I hereby authorize Cobb County Superior Court to verify any information contained.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**ENDORSEMENT**

The undersigned member in good standing of the State Bar of Georgia hereby endorses the above applicant to be appointed as a permanent process server of Cobb Superior Court and attests to such applicant's good character, honesty and integrity.

This \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
Attorney at Law

Georgia State Bar Number \_\_\_\_\_

# Superior Court of Cobb County

## Criminal History Authorization Form

I, \_\_\_\_\_, do hereby authorize the Cobb County Superior Court to review my criminal history record.

Full Name: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Place of Birth: \_\_\_\_\_

Race: \_\_\_\_\_

Sex: \_\_\_\_\_

Present Home Address: \_\_\_\_\_  
\_\_\_\_\_

Driver's License Number: \_\_\_\_\_

I have read the above questions and answers and they are correct and true. The undersigned swears that the information given herein is true and correct and I understand that a false answer to any item may result in criminal charges.

This \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_

(Signature)

Notary Public

Sworn and subscribed before me

This \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Notary Public, \_\_\_\_\_ County,

My commission expires:

# **Superior Court of Cobb County**

## **Permanent Process Server Renewal Form**

### PRIMARY NOTICE

As you know, your status as an active Permanent Process Server for Cobb County Superior Court will turn inactive as of January 4, 2009. If you would like to extend your appointment through January 4, 2010 please indicate so by signing below and returning this form and a notarized copy of the attached form to the address listed below. Once our office receives your request, we will issue another order allowing you to remain an active process server for our court through January 4, 2010.

Yes, I \_\_\_\_\_ (please print name), request that my term as a Permanent Process Server for Cobb County Superior Court be extended through January 4, 2010.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Please return this form and notarized copy of the attached form to:

Kimberley L. Hicks  
Cobb County Superior Court Administration  
30 Waddell Street  
Marietta, GA 30090-9642

\*\* If the biographical information listed on the primary notice sheet is not correct, please make the corrections on this page.

**Permanent Process Server Application and Applicable Materials – Paulding Judicial  
Circuit Superior Court**

## Paulding Judicial Circuit Superior Courts

- [Home](#)

## Process Servers

If you would like to become a permanent process server in Paulding County the following forms must be completed. A criminal background is required to be come a process server.

All forms must be mailed to the attention of Cheston Roney, Court Administrator, 11 Courthouse Square, Room 303, Dallas, GA 30132.

If approved, the process server would be approved until the end of the year. Each year a a renewal form will be supplied and a new order will be required.

- [Application](#)
- [Background Check Form](#)
- [Instructions](#)

Process Server List - 2009 - This will be posted later this week.

[Back to Paulding Circuit](#)

**SUPERIOR COURT OF PAULDING COUNTY  
PERMANENT PROCESS SERVER APPLICATION FORM**

**PLEASE TYPE OR PRINT IN BLACK INK**

---

**NAME:** Last                      First                      Middle

---

**ADDRESS:**

---

**PREVIOUS ADDRESS** (If at present address less than 5 years):

---

**SOCIAL SECURITY NUMBER**

---

**DATE OF BIRTH**

---

**PLACE OF BIRTH**

---

**PHONE NUMBERS**                      Home                      Work

**EDUCATION**

**HIGH SCHOOL**

---

Name of School

---

Address of School

---

Date of Leaving                      Did you graduate?

---

Highest grade of school completed

**SUPERIOR COURT OF PAULDING COUNTY  
PERMANENT PROCESS SERVER APPLICATION FORM**

**COLLEGE OR UNIVERSITY**

---

Name of School

---

Address of School

---

Dates Attended                      From                      To

---

Hours Earned Quarter/Semester

---

Degree Year                      Degree Awarded

---

Major

---

Name of School

---

Address of School

---

Dates Attended                      From                      To

---

Hours Earned Quarter/Semester

---

Degree Year                      Degree Awarded

---

Major



**SUPERIOR COURT OF PAULDING COUNTY  
PERMANENT PROCESS SERVER APPLICATION FORM**

**BUSINESS, TRADE, TECHNICAL SCHOOLS AND OTHER TRAINING**

---

Name of School

---

Address of School

---

Dates Attended:      From    To      Number of Hours per Week

---

Certificates Received

---

Subject Taken

**EMPLOYMENT**

---

Name of Employing Agency, Company or Institution:

---

Address

---

Name and Title of Immediate Supervisor

---

Your Job Title

---

Description of your duties and responsibilities

---

Date Employed                      From                      To

---

Reason for Leaving

**SUPERIOR COURT OF PAULDING COUNTY  
PERMANENT PROCESS SERVER APPLICATION FORM**

---

Name of Employing Agency, Company or Institution:

---

Address

---

Name and Title of Immediate Supervisor

---

Your Job Title

---

Description of your duties and responsibilities

---

Date Employed

From

To

---

Reason for Leaving

**VIOLATIONS OF THE LAW**

The following questions have to do with violations of the law. A conviction for a violation does not automatically mean that you cannot be appointed. Give all pertinent facts so that a decision can be made. In answering these items, you may omit minor traffic violations.

1. Have you ever been convicted of an offense against the law?  
\_\_\_\_yes \_\_\_\_no
2. Have you ever been convicted of an offense against the law while in military service?  
\_\_\_\_yes \_\_\_\_no
3. Was any conviction pursuant to adjudication in a juvenile court, a youthful offender act or a first offender act? \_\_\_\_yes \_\_\_\_no

**SUPERIOR COURT OF PAULDING COUNTY  
PERMANENT PROCESS SERVER APPLICATION FORM**

If the answer to any of the above items is "YES", give details below. Show for each offense the date, charge, place, court, and action taken. Attach extra sheets if necessary. \_\_\_\_\_

---

---

**REFERENCES**

Names and addresses of two (2) persons who have knowledge of your character and qualifications and whom we may contact (Not relatives or former employers)

1. \_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

2. \_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

CERTIFICATION: I certify that all information given in this biographical sketch is true and correct to the best of my knowledge and belief. I hereby authorize Paulding County Superior Court to verify any information contained.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**SUPERIOR COURT OF PAULDING COUNTY  
PERMANENT PROCESS SERVER APPLICATION FORM**

**ENDORSEMENT**

The undersigned member in good standing of the State Bar of Georgia hereby endorses the above applicant to be appointed as a permanent process server of Paulding Superior Court and attests to such applicant's good character, honesty and integrity.

This \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

---

Attorney at Law

---

Georgia State Bar Number

**SUPERIOR COURT OF PAULDING COUNTY  
PERMANENT PROCESS SERVER LETTER**

**To:** Prospective Permanent Process Server

**From:** Cheston Roney, Court Administrator

**Date:** January 28, 2008

**RE:** Permanent Process Server Program

Attached you will find an application to become a process server for Paulding County Superior Court. The qualifications are as follows:

1. Must submit an application,
2. Must be endorsed by a member of the State Bar of Georgia in good standing to have good character, honesty and integrity,
3. Be at least 18 years of age,
4. Must consent to a background check and must have not committed any serious criminal offenses,
5. The application must be approved by the Court Administrator.

Once the application has been approved, your order will be mailed to you and it will be in effect through January 9, 2009.

If you have any questions, please do not hesitate to contact Cheston Roney at (770) 443-7505.

**Proposed Georgia Senate bill to establish state-wide registration requirement for  
permanent process servers**

The Senate Special Judiciary Committee offered the following substitute to SB 41:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 9-11-4 of the Official Code of Georgia Annotated, relating to  
2 process in civil practice, so as to provide for service upon persons residing in gated and  
3 secured communities; to provide for who will serve a summons within certain time frames;  
4 to provide for filing the return of service; to provide for state-wide registration of permanent  
5 process servers; to change certain provisions relating to process in civil practice; to provide  
6 for related matters; to provide an effective date; to repeal conflicting laws; and for other  
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Code Section 9-11-4 of the Official Code of Georgia Annotated, relating to process in civil  
11 practice, is amended by revising subsection (c) as follows:  
12 " (c) *Summons — By whom served.* Within five days from the time a complaint is filed,  
13 process Process shall be served by the sheriff of the county where the action is brought or  
14 where the defendant is found, or by such sheriff's deputy, or by the marshal or sheriff of  
15 the court, or by such official's deputy, or by any citizen of the United States specially  
16 appointed by the court for that purpose,. After five days from the time a complaint is filed,  
17 a complaint may be served by the sheriff of the county where the action is brought or where  
18 the defendant is found, or by such sheriff's deputy, or by the marshal or sheriff of the court,  
19 or by such official's deputy, or by any citizen of the United States specially appointed by  
20 the court in which the action is brought for that purpose, or by someone who is not a party  
21 and is not younger than 18 years of age and has been appointed as a permanent process  
22 server pursuant to subsection (m) of this Code section by the court in which the action is  
23 brought. Where the service of process is made outside of the United States, after an order  
24 of publication, it may be served either by any citizen of the United States or by any resident  
25 of the country, territory, colony, or province who is specially appointed by the court for

26 that purpose. When service is to be made within this state, the person making such service

1 shall make the service within five days from the time of receiving the summons and

2 complaint; but failure to make service within the five-day period will not invalidate a later

3 service."

#### 4 **SECTION 2.**

5 Said Code section is further amended in subsection (f) by adding a new paragraph to read as

6 follows:

7 " (4) SERVICE UPON PERSONS RESIDING IN GATED AND SECURED COMMUNITIES.

8 (A) As used in this paragraph, the term 'gated and secured communities' means

9 multiple residential or commercial properties, such as houses, condominiums, offices,

10 or apartments, where access to the multiple residential or commercial properties is

11 restricted by a gate, security device, or security attendant that restricts public entrance

12 onto the property; provided, however, that a single residence, farm, or commercial

13 property with its own fence or gate shall not be included in this definition.

14 (B) Any person authorized to serve process shall be granted access to gated and

15 secured communities for a reasonable period of time for the purpose of performing

16 lawful service of process upon:

17 (i) Identifying to the guard or managing agent the person, persons, entity, or entities

18 to be served;

19 (ii) Displaying a current driver's license; and

20 (iii) Displaying evidence of current appointment as a process server pursuant to

21 subsection (m) of this Code section."

#### 22 **SECTION 3.**

23 Said Code section is further amended by revising subsection (h) as follows:

24 " (h) *Return.* The person serving the process shall ~~make proof of service thereof to the~~

25 ~~court promptly and, in any event, within the time during which the person served must~~



~~26 respond to the process~~ file the proof of such service with the court in the county in which  
27 the action is pending within five business days of the service date. If the proof of service  
28 is not filed, the time for the party served to answer the process will not begin to run until  
29 such proof of service is filed. Proof of service shall be as follows:  
30 (1) If served by a sheriff or marshal, or such official's deputy, the affidavit or certificate  
31 of the sheriff, marshal, or deputy;  
32 (2) If by any other proper person, such person's affidavit;  
33 (3) In case of publication, the certificate of the clerk of court certifying to the publication  
34 and mailing; or  
35 (4) The written admission or acknowledgment of service by the defendant.

07 LC 36 0604S

1 In the case of service otherwise than by publication, the certificate or affidavit shall state  
2 the date, place, and manner of service. Failure to make proof of service shall not affect the  
3 validity of the service."

#### 4 **SECTION 4.**

5 Said Code section is further amended by adding a new subsection to read as follows:

6 " (m) *State-wide registration of permanent process servers.*

7 (1) A person who files with the clerk of any superior court a motion stating that the  
8 movant has been a bona fide resident of the State of Georgia and engaged in the process  
9 serving industry for at least one year immediately preceding the motion and that the  
10 movant will faithfully serve process in accordance with the law and who otherwise  
11 complies with this Code section and any procedures and requirements set forth in any  
12 rules or regulations promulgated by the Judicial Council of Georgia regarding this  
13 subsection shall, absent good cause shown, be appointed as a permanent process server  
14 by the superior court in the county where the motion is filed, and the clerk of the court  
15 shall ensure the appointment is registered with the Judicial Council of Georgia. Said  
16 registration shall be effective for a period of two years or until such approval is  
17 withdrawn by the court upon good cause shown, whichever shall first occur. The Judicial  
18 Council of Georgia shall maintain a register for this purpose. Such permanent process  
19 server shall be entitled to serve in such capacity for any court of the state, anywhere  
20 within the state.

21 (2) Any person seeking to become a process server with authority to serve process for  
22 any court of the state shall, before being authorized to act as a permanent process server:

23 (A) Undergo a criminal record check by the Administrative Office of the Courts  
24 through the Georgia and National Crime Information Centers;

25 (B) Pass a test to be administered by the Administrative Office of the Courts. The test  
26 will measure the applicant's knowledge of state law regarding serving of process and  
27 other papers on various entities and persons. The Administrative Office of the Courts  
28 shall design said test, promulgate rules and regulations regarding the necessary fee to  
29 cover the cost of the test and the administrative expense for processing the application,  
30 and determine what constitutes passing under this subsection;

31 (C) Be approved by the Judicial Council of Georgia which shall review the application,  
32 test score, criminal record check, and such other information or documentation as  
33 required by the council. Upon review, the council shall make a fitness determination  
34 in accordance with standards and procedures promulgated by the council as to whether  
35 the applicant shall be approved for registration and authorized to act as a process server  
36 in this state; and the council's determination shall be provided to the applicant in

07 LC 36 0604S

1 writing. A copy of the council's determination shall be submitted with any motion

2 requesting appointment as a permanent process server; and

3 (D) Upon the court granting the applicant's motion, swear under oath, in open court

4 or in chambers before the superior court judge granting the motion: 'I do so solemnly

5 swear (or affirm) that I will conduct myself as a process server truly and honestly, justly

6 and uprightly, and according to law; and that I will support the Constitution of the State

7 of Georgia and the Constitution of the United States. I further swear (or affirm) that I

8 will not serve any papers or process in any action where I have a financial or personal

9 interest in the outcome of the matter or where any person to whom I am related by

10 blood or marriage has such an interest.'

11 (3) A permanent process server shall be required to renew his or her registration every

12 two years in a manner and at such time as required by the Judicial Council of Georgia.

13 Any permanent process server failing to renew his or her registration as required by the

14 rules and regulations of the council shall be removed from the council's registry and shall

15 no longer be approved to serve as a permanent process server.

16 (4) A permanent process server may be removed from the registry at any time, in

17 accordance with procedures established by the Administrative Office of the Courts."

#### 18 **SECTION 5.**

19 This Act shall become effective on July 1, 2007.

#### 20 **SECTION 6.**

21 All laws and parts of laws in conflict with this Act are repealed.

**Proposed Georgia House bill to establish state-wide registration requirement for permanent process servers**

The House Committee on Judiciary offers the following substitute to HB 705:

A BILL TO BE ENTITLED

AN ACT

1 To amend Code Section 9-11-4 of the Official Code of Georgia Annotated, relating to  
2 process in civil practice, so as to provide for service upon persons residing in gated and  
3 secured communities; to provide for filing the return of service; to provide for state-wide  
4 registration of permanent process servers; to change certain provisions relating to process in  
5 civil practice; to provide for related matters; to provide for severability; to provide an  
6 effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Code Section 9-11-4 of the Official Code of Georgia Annotated, relating to process in civil  
10 practice, is amended in subsection (f) by adding a new paragraph (4) to read as follows:  
11 "(4) SERVICE UPON PERSONS RESIDING IN GATED AND SECURED COMMUNITIES.

12 (A) As used in this paragraph, the term 'gated and secured communities' means  
13 multiple residential or commercial properties, such as houses, condominiums, offices,  
14 or apartments, where access to the multiple residential or commercial properties is  
15 restricted by a gate, security device, or security attendant that restricts public entrance  
16 onto the property; provided, however, that a single residence, farm, or commercial  
17 property with its own fence or gate shall not be included in this definition.  
18 (B) Any person authorized to serve process shall be granted access to gated and  
19 secured communities for a reasonable period of time for the purpose of performing  
20 lawful service of process upon:

21 (i) Identifying to the guard or managing agent the person, persons, entity, or entities  
22 to be served;  
23 (ii) Displaying a current driver's license or other identification; and  
24 (iii) Displaying evidence of current appointment as a process server pursuant to  
25 subsection (m) of this Code section."

06 LC 35 0126S

H. B. 705 (SUB)

## 1 SECTION 2.

2 Said Code section is further amended by striking subsection (h) in its entirety and adding a  
3 new subsection (h) to read as follows:

4 "(h) *Return.* The person serving the process shall ~~make proof of service thereof to the~~  
5 ~~court promptly and, in any event, within the time during which the person served must~~  
6 ~~respond to the process~~ file the proof of such service with the court in the county in which  
7 the action is pending within five business days of the service date. If the proof of service  
8 is not filed, the time for the party served to answer the process will not begin to run until  
9 such proof of service is filed. Proof of service shall be as follows:

10 (1) If served by a sheriff or marshal, or such official's deputy, the affidavit or certificate  
11 of the sheriff, marshal, or deputy;

12 (2) If by any other proper person, such person's affidavit;

13 (3) In case of publication, the certificate of the clerk of court certifying to the publication

14 and mailing; or

15 (4) The written admission or acknowledgment of service by the defendant.

16 In the case of service otherwise than by publication, the certificate or affidavit shall state

17 the date, place, and manner of service. Failure to make proof of service shall not affect the

18 validity of the service."

### 19 **SECTION 3.**

20 Said Code section is further amended by adding a new subsection to read as follows:

21 "(m) *State-wide registration of permanent process servers.*

22 (1) A person who files with the clerk of any superior court a motion stating that the

23 movant has been a bona fide resident of the State of Georgia and engaged in the process

24 serving industry for at least one year immediately preceding the motion and that the

25 movant will faithfully serve process in accordance with the law, and who otherwise

26 complies with this Code section and any procedures and requirements set forth in any

27 rules or regulations promulgated by the Judicial Council of Georgia regarding this

28 subsection shall, absent good cause shown, be appointed as a permanent process server

29 by the superior court in the county where the motion is filed, and the clerk of the court

30 shall ensure the appointment is registered with the Judicial Council of Georgia. Said

31 registration shall be effective for a period of two years or until such approval is

32 withdrawn by the court upon good cause shown, whichever shall first occur. The Judicial

33 Council of Georgia shall maintain a register for this purpose. Such permanent process

06 LC 35 0126S

H. B. 705 (SUB)

1 server shall be entitled to serve in such capacity for any court of the state, anywhere

2 within the state.

3 (2) Any person seeking to become a process server with authority to serve process for



4 any court of the state shall, before being authorized to act as a permanent process server:

5 (A) Undergo a criminal record check by the Administrative Office of the Courts

6 through the Georgia and National Crime Information Centers;

7 (B) Pass a test to be administered by the Administrative Office of the Courts. The test

8 will measure the applicant's knowledge of state law regarding serving of process and

9 other papers on various entities and persons. The Administrative Office of the Courts

10 shall design said test, promulgate rules and regulations regarding the necessary fee to

11 cover the cost of the test and the administrative expense for processing the application,

12 and determine what constitutes passing under this subsection;

13 (C) Be approved by the Judicial Council of Georgia which shall review the application,

14 test score, criminal record check, and such other information or documentation as

15 required by the council. Upon review, the council shall make a fitness determination

16 in accordance with standards and procedures promulgated by the council as to whether

17 the applicant shall be approved for registration and authorized to act as a process server

18 in this state; and the council's determination shall be provided to the applicant in

19 writing. A copy of the council's determination shall be submitted with any motion

20 requesting appointment as a permanent process server; and

21 (D) Upon the court granting the applicant's motion, swear under oath, in open court

22 or in chambers before the superior court judge granting the motion: 'I do solemnly

23 swear (or affirm) that I will conduct myself as a process server truly and honestly, justly

24 and uprightly, and according to law; and that I will support the Constitution of the State

25 of Georgia and the Constitution of the United States. I further swear (or affirm) that

26 I will not serve any papers or process in any action where I have a financial or personal

27 interest in the outcome of the matter or where any person to whom I am related by

28 blood or marriage has such an interest.'

29 (3) A permanent process server shall be required to renew his or her registration every

30 two years in a manner and at such time as required by the Judicial Council of Georgia.

31 Any permanent process server failing to renew his or her registration as required by the

32 rules and regulations of the council shall be removed from the council's registry and shall  
33 no longer be approved to serve as a permanent process server.  
34 (4) A permanent process server may be removed from the registry at any time, in  
35 accordance with procedures established by the Administrative Office of the Courts."

06 LC 35 0126S  
H. B. 705 (SUB)

#### **SECTION 4.**

2 In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared  
3 or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other  
4 sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full  
5 force and effect as if the section, subsection, sentence, clause, or phrase so declared or  
6 adjudged invalid or unconstitutional were not originally a part hereof. The General  
7 Assembly declares that it would have passed the remaining parts of this Act if it had known  
8 that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

#### **9 SECTION 5.**

10 This Act shall become effective on July 1, 2006.

#### **11 SECTION 6.**

12 All laws and parts of laws in conflict with this Act are repealed.

## **HAWAII PROCESS SERVER REQUIREMENTS**

Hawaii does not have any education or registration requirements for private process servers. Hawaii Rule of Civil Procedure 4(c) provides as follows:

Service of all process shall be made: (1) anywhere in the State by the sheriff or the sheriff's deputy, by some other person specially appointed by the court for that purpose, or by any person who is not a party and is not less than 18 years of age; or (2) in any county by the chief of police or the chief's duly authorized subordinate. A subpoena, however, may be served as provided in Rule 45.

The Hawaii State Department of Public Safety maintains lists of authorized civil process servers for five types of service: orders to show cause, writs of attachment and execution; garnishment documents; writs of replevin; and writs of possession. The authorization process requires application to the Deputy Director of Law Enforcement. Training is informal, by either those already on the list or by an attorney.<sup>2</sup>

### **Appended Applicable Provisions:**

- Hawaii Rule of Civil Procedure 4(c)

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<sup>2</sup> Interview with James L. Propotnick, Deputy Director of Law Enforcement, Hawaii State Department of Public Safety (Apr. 13, 2009).

## **Hawaii Rule of Civil Procedure 4**

Hawai'i Rules of Civil Procedure  
Adopted and promulgated by the Supreme Court of the State of Hawai'i.  
As amended.

II. COMMENCEMENT OF ACTION: SERVICE OF PROCESS, PLEADINGS, MOTIONS  
AND ORDERS

Haw. R. Civ. P. Rule 4 (2008)

**Rule 4. Process.**

**(a) Summons: Issuance.**

Upon the filing of the complaint the clerk shall forthwith issue a summons. Plaintiff shall deliver the complaint and summons for service to a person authorized to serve process. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

**(b) Same: Form.**

The summons shall

- (1) be signed by the clerk, under the seal of the court,
- (2) contain the name of the court, the names of the parties, and the date when issued,
- (3) be directed to the defendant,
- (4) state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address,
- (5) state the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint,
- (6) contain a prohibition against personal delivery of the summons between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge of the district or circuit courts permits, in writing on the summons, personal delivery during those hours, and
- (7) contain a warning to the person summoned that failure to obey the summons may result in an entry of default and default judgment.

When, under Rule 4(e), service is made pursuant to a statute or rule of court, the summons, or notice, or order in lieu of summons, shall correspond as nearly as may be to that required by the statute or rule.

**(c) Same: By whom served.**

Service of all process shall be made: (1) anywhere in the State by the sheriff or the sheriff's deputy, by some other person specially appointed by the court for that purpose, or by any person who is not a party and is not less than 18 years of age; or (2) in any county by the chief of police or the chief's duly authorized subordinate. A subpoena, however, may be served as provided in Rule 45.

## **IDAHO PROCESS SERVER REQUIREMENTS**

Idaho does not have any education or registration requirements for private process servers.

Idaho Rule of Civil Procedure 4(c)(1) provides as follows:

Service of all process shall be made by an officer authorized by law to serve process, or by some person over the age of eighteen (18), not a party to the action.

A subpoena may be served as provided in Rule 45.

## ILLINOIS PROCESS SERVICE REQUIREMENTS

Illinois state law details the persons who are authorized to serve process. 735 Ill. Comp. Stat. 5/2-202. The law states that “[p]rocess shall be served by a sheriff, or if the sheriff is disqualified, by a coroner of some county of the State.” § 5/2-202(a). In counties with a population of less than 1,000,000, a sheriff may employ civilian personnel to serve process. Id.

In addition, in counties with a population of less than 1,000,000, process may be served “without special appointment” by licensed or registered private detectives. Id. Private detectives are licensed through Illinois State Division of Professional Regulation. See, 225 Ill. Comp. Stat. 447/10-25. Requirements include training, 225 Ill. Comp. Stat. 447/15-25, examination, § 225 Ill. Comp. Stat. 447/10-35, and continuing education. § 225 Ill. Comp. Stat. 447/10-27.

State law also provides that “[t]he court may, in its discretion upon motion, order service to be made by a private person over 18 years of age and not a party to the action.” 735 Ill. Comp. Stat. 5/2-202(a).

We spoke with the President of the Illinois Sheriffs’ Association, Sheriff Gib Cody, who explained that the Association provides training on service of process for sheriffs and their personnel and that individual sheriffs’ offices also conduct ongoing training in this area. Sheriff Cody stated that the preferred practice in Illinois was to employ sheriffs for civil process of service.<sup>3</sup>

### **Appended Applicable Provisions:**

- 735 Ill. Comp. Stat. 5/2-202 – persons authorized to serve process; place of service; failure to make return
- 225 Ill. Comp. Stat. 447/10-5 – requirement of license (private detective)
- 225 Ill. Comp. Stat. 447/10-10 – general exemptions
- 225 Ill. Comp. Stat. 447/10-20 – application for license; forms
- 225 Ill. Comp. Stat. 447/10-25 – issuance of license; renewal; fees
- 225 Ill. Comp. Stat. 447/10-27 – continuing education
- 225 Ill. Comp. Stat. 447/10-30 – unlawful acts
- 225 Ill. Comp. Stat. 447/10-35 – examination of applicants; forfeiture of fee
- 225 Ill. Comp. Stat. 447/15-10 – qualifications for licensure as a private detective
- 225 Ill. Comp. Stat. 447/15-25 – training; private detective and employees
- Ill. Admin. Code tit. 68, § 1240.10 – application for examination and licensure, private detective

### **Appended Applicable Materials:**

- Private Detective and Private Security Contractor Licensure Examination Information

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<sup>3</sup> Interview with Sheriff Gib Cody, President, Illinois Sheriffs’ Association (Apr. 13, 2009).

**735 Ill. Comp. Stat. 5/2-202 – persons authorized to serve process; place of service; failure to make return**



CHAPTER 735. CIVIL PROCEDURE  
CODE OF CIVIL PROCEDURE  
ARTICLE II. CIVIL PRACTICE  
PART 2. PROCESS

[GO TO THE ILLINOIS STATUTES ARCHIVE DIRECTORY](#)

735 ILCS 5/2-202 (2009)

[Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 110, para. 2-202]

§ 735 ILCS 5/2-202. Persons authorized to serve process; Place of service; Failure to make return

Sec. 2-202. Persons authorized to serve process; Place of service; Failure to make return.  
(a) Process shall be served by a sheriff, or if the sheriff is disqualified, by a coroner of some county of the State. A sheriff of a county with a population of less than 1,000,000 may employ civilian personnel to serve process. In counties with a population of less than 1,000,000, process may be served, without special appointment, by a person who is licensed or registered as a private detective under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 [[225 ILCS 447/5-5](#) et seq.] or by a registered employee of a private detective agency certified under that Act. A private detective or licensed employee must supply the sheriff of any county in which he serves process with a copy of his license or certificate; however, the failure of a person to supply the copy shall not in any way impair the validity of process served by the person. The court may, in its discretion upon motion, order service to be made by a private person over 18 years of age and not a party to the action. It is not necessary that service be made by a sheriff or coroner of the county in which service is made. If served or sought to be served by a sheriff or coroner, he or she shall endorse his or her return thereon, and if by a private person the return shall be by affidavit.

(a-5) Upon motion and in its discretion, the court may appoint as a special process server a private detective agency certified under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 [[225 ILCS 446/1](#) et seq.]. Under the appointment, any employee of the private detective agency who is registered under that Act may serve the process. The motion and the order of appointment must contain the number of the certificate issued to the private detective agency by the Department of Professional Regulation under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 [[225 ILCS 447/5-5](#) et seq.].

(b) Summons may be served upon the defendants wherever they may be found in the State, by any person authorized to serve process. An officer may serve summons in his or her official capacity outside his or her county, but fees for mileage outside the county of the officer cannot be taxed as costs. The person serving the process in a foreign county may make return by mail.

(c) If any sheriff, coroner, or other person to whom any process is delivered, neglects or refuses to make return of the same, the plaintiff may petition the court to enter a rule requiring the sheriff, coroner, or other person, to make return of the process on a day to be fixed by the court, or to show cause on that day why that person should not be attached for contempt of the court. The plaintiff shall then cause a written notice of the rule to be served

on the sheriff, coroner, or other person. If good and sufficient cause be not shown to excuse the officer or other person, the court shall adjudge him or her guilty of a contempt, and shall impose punishment as in other cases of contempt.

(d) If process is served by a sheriff or coroner, the court may tax the fee of the sheriff or coroner as costs in the proceeding. If process is served by a private person or entity, the court may establish a fee therefor and tax such fee as costs in the proceedings.

(e) In addition to the powers stated in Section 8.1a of the Housing Authorities Act [[310 ILCS 10/8.1a](#)], in counties with a population of 3,000,000 or more inhabitants, members of a housing authority police force may serve process for forcible entry and detainer actions commenced by that housing authority and may execute orders of possession for that housing authority.

(f) In counties with a population of 3,000,000 or more, process may be served, with special appointment by the court, by a private process server or a law enforcement agency other than the county sheriff in proceedings instituted under the Forcible Entry and Detainer Article of this Code [[735 ILCS 5/9-101](#) et seq.] as a result of a lessor or lessor's assignee declaring a lease void pursuant to Section 11 of the Controlled Substance and Cannabis Nuisance Act [[740 ILCS 40/11](#)].

**HISTORY:**

Source: [P.A. 86-660](#); [89-594](#), § 370; [90-557](#), § 5; [91-95](#), § 5; [93-438](#), § 90-35; [95-613](#), § 50.

**225 Ill. Comp. Stat. 447/10-5 – requirement of license (private detective)**

CHAPTER 225. PROFESSIONS AND OCCUPATIONS  
SERVICE AND SALES  
PRIVATE DETECTIVE, PRIVATE ALARM, PRIVATE SECURITY, AND LOCKSMITH ACT OF 2004  
ARTICLE 10. GENERAL LICENSING PROVISIONS

[GO TO THE ILLINOIS STATUTES ARCHIVE DIRECTORY](#)

225 ILCS 447/10-5 (2009)

§ 225 ILCS 447/10-5. (For postponed repeal of this Act, see notes under 225 ILCS 447/5-5) Requirement of license

Sec. 10-5. (a) It is unlawful for a person to act as or provide the functions of a private detective, private security contractor, private alarm contractor, fingerprint vendor, or locksmith or to advertise or to assume to act as any one of these, or to use these or any other title implying that the person is engaged in any of these activities unless licensed as such by the Department. An individual or sole proprietor who does not employ any employees other than himself or herself may operate under a "doing business as" or assumed name certification without having to obtain an agency license, so long as the assumed name is first registered with the Department.

(b) It is unlawful for a person, firm, corporation, or other legal entity to act as an agency licensed under this Act, to advertise, or to assume to act as a licensed agency or to use a title implying that the person, firm, or other entity is engaged in the practice as a private detective agency, private security contractor agency, private alarm contractor agency, fingerprint vendor agency, or locksmith agency unless licensed by the Department.

(c) No agency shall operate a branch office without first applying for and receiving a branch office license for each location.

(d) Beginning 12 months after the adoption of rules providing for the licensure of fingerprint vendors under this Act, it is unlawful for a person to operate live scan fingerprint equipment or other equipment designed to obtain fingerprint images for the purpose of providing fingerprint images and associated demographic data to the Department of State Police, unless he or she has successfully completed a fingerprint training course conducted or authorized by the Department of State Police and is licensed as a fingerprint vendor.

(e) Beginning 12 months after the adoption of rules providing for the licensure of canine handlers and canine trainers under this Act, no person shall operate a canine training facility unless licensed as a private detective agency or private security contractor agency under this Act, and no person shall act as a canine trainer unless he or she is licensed as a private detective or private security contractor or is a registered employee of a private detective agency or private security contractor agency approved by the Department.

**225 Ill. Comp. Stat. 447/10-10 – general exemptions**

CHAPTER 225. PROFESSIONS AND OCCUPATIONS  
SERVICE AND SALES  
PRIVATE DETECTIVE, PRIVATE ALARM, PRIVATE SECURITY, AND LOCKSMITH ACT OF 2004  
ARTICLE 10. GENERAL LICENSING PROVISIONS

**[GO TO THE ILLINOIS STATUTES ARCHIVE DIRECTORY](#)**

225 ILCS 447/10-10 (2009)

§ 225 ILCS 447/10-10. (For postponed repeal of this Act, see notes under 225 ILCS 447/5-5) General exemptions

Sec. 10-10. This Act does not apply to any of the following:

- (1) A person, firm, or corporation engaging in fire protection engineering, including the design, testing, and inspection of fire protection systems.
- (2) The practice of professional engineering as defined in the Professional Engineering Practice Act of 1989 [[225 ILCS 325/1](#) et seq.].
- (3) The practice of structural engineering as defined in the Structural Engineering Practice Act of 1989 [[225 ILCS 340/1](#) et seq.].
- (4) The practice of architecture as defined in the Illinois Architecture Practice Act of 1989 [[225 ILCS 305/1](#) et seq.].
- (5) The activities of persons or firms licensed under the Illinois Public Accounting Act [[225 ILCS 450/0.01](#) et seq.] if performed in the course of their professional practice.
- (6) An attorney licensed to practice in Illinois while engaging in the practice of law.
- (7) A person engaged exclusively and employed by a person, firm, association, or corporation in the business of transporting persons or property in interstate commerce and making an investigation related to the business of that employer.
- (8) A person who provides canine odor detection services to a unit of federal, State, or local government on an emergency call-out or volunteer and not-for-hire basis.

**225 Ill. Comp. Stat. 447/10-20 – application for license; forms**

CHAPTER 225. PROFESSIONS AND OCCUPATIONS  
SERVICE AND SALES  
PRIVATE DETECTIVE, PRIVATE ALARM, PRIVATE SECURITY, AND LOCKSMITH ACT OF 2004  
ARTICLE 10. GENERAL LICENSING PROVISIONS

**[GO TO THE ILLINOIS STATUTES ARCHIVE DIRECTORY](#)**

225 ILCS 447/10-20 (2009)

§ 225 ILCS 447/10-20. (For postponed repeal of this Act, see notes under 225 ILCS 447/5-5) Application for license; forms

Sec. 10-20. (a) Each license application shall be on forms provided by the Department.

(b) Application for a license by endorsement shall be made in accordance with the provisions of Section 10-40 [[225 ILCS 447/10-40](#)].

(c) Every application for an original, renewal, or restored license shall include the applicant's Social Security number.



**225 Ill. Comp. Stat. 447/10-25 – issuance of license; renewal; fees**

CHAPTER 225. PROFESSIONS AND OCCUPATIONS  
SERVICE AND SALES  
PRIVATE DETECTIVE, PRIVATE ALARM, PRIVATE SECURITY, AND LOCKSMITH ACT OF 2004  
ARTICLE 10. GENERAL LICENSING PROVISIONS

[GO TO THE ILLINOIS STATUTES ARCHIVE DIRECTORY](#)

225 ILCS 447/10-25 (2009)

§ 225 ILCS 447/10-25. (For postponed repeal of this Act, see notes under 225 ILCS 447/5-5) Issuance of license; renewal; fees

Sec. 10-25. (a) The Department shall, upon the applicant's satisfactory completion of the requirements set forth in this Act and upon receipt of the fee, issue the license indicating the name and business location of the licensee and the date of expiration.

(b) An applicant may, upon satisfactory completion of the requirements set forth in this Act and upon receipt of fees related to the application and testing for licensure, elect to defer the issuance of the applicant's initial license for a period not longer than 6 years. An applicant who fails to request issuance of his or her initial license or agency license and to remit the fees required for that license within years shall be required to resubmit an application together with all required fees.

(c) The expiration date, renewal period, and conditions for renewal and restoration of each license, permanent employee registration card, canine handler authorization card, canine trainer authorization card, and firearm control card shall be set by rule. The holder may renew the license, permanent employee registration card, canine handler authorization card, canine trainer authorization card, or firearm control card during the 30 days preceding its expiration by paying the required fee and by meeting conditions that the Department may specify. Any license holder who notifies the Department on forms prescribed by the Department may place his or her license on inactive status for a period of not longer than 6 years and shall, subject to the rules of the Department, be excused from payment of renewal fees until the license holder notifies the Department, in writing, of an intention to resume active status. Practice while on inactive status constitutes unlicensed practice. A non-renewed license that has lapsed for less than 6 years may be restored upon payment of the restoration fee and all lapsed renewal fees. A license that has lapsed for more than 6 years may be restored by paying the required restoration fee and all lapsed renewal fees and by providing evidence of competence to resume practice satisfactory to the Department and the Board, which may include passing a written examination. All restoration fees and lapsed renewal fees shall be waived for an applicant whose license lapsed while on active duty in the armed forces of the United States if application for restoration is made within 12 months after discharge from the service.

Any person seeking renewal or restoration under this subsection (c) shall be subject to the continuing education requirements established pursuant to Section 10-27 of this Act [[225 ILCS 447/10-27](#)].

(d) Any permanent employee registration card expired for less than one year may be restored upon payment of lapsed renewal fees. Any permanent employee registration card expired for one year or more may be restored by making application to the Department and filing proof acceptable to the Department of the licensee's fitness to have the permanent

employee registration card restored, including verification of fingerprint processing through the Department of State Police and Federal Bureau of Investigation and paying the restoration fee.

**225 Ill. Comp. Stat. 447/10-27 – continuing education**

CHAPTER 225. PROFESSIONS AND OCCUPATIONS  
SERVICE AND SALES  
PRIVATE DETECTIVE, PRIVATE ALARM, PRIVATE SECURITY, AND LOCKSMITH ACT OF 2004  
ARTICLE 10. GENERAL LICENSING PROVISIONS

[GO TO THE ILLINOIS STATUTES ARCHIVE DIRECTORY](#)

225 ILCS 447/10-27 (2009)

§ 225 ILCS 447/10-27. (For postponed repeal of this Act, see notes under 225 ILCS 447/5-5) Continuing education

Sec. 10-27. The Department may adopt rules of continuing education for persons licensed under this Act. The Department shall consider the recommendations of the Board in establishing guidelines for the continuing education requirements.

**225 Ill. Comp. Stat. 447/10-30 – unlawful acts**

CHAPTER 225. PROFESSIONS AND OCCUPATIONS  
SERVICE AND SALES  
PRIVATE DETECTIVE, PRIVATE ALARM, PRIVATE SECURITY, AND LOCKSMITH ACT OF 2004  
ARTICLE 10. GENERAL LICENSING PROVISIONS

[GO TO THE ILLINOIS STATUTES ARCHIVE DIRECTORY](#)

225 ILCS 447/10-30 (2009)

§ 225 ILCS 447/10-30. (For postponed repeal of this Act, see notes under 225 ILCS 447/5-5) Unlawful acts

Sec. 10-30. It is unlawful for a licensee or an employee of a licensed agency:

- (1) Upon termination of employment by the agency, to fail to return upon demand or within 72 hours of termination of employment any firearm issued by the employer together with the employee's firearm control card.
- (2) Upon termination of employment by the agency, to fail to return within 72 hours of termination of employment any uniform, badge, identification card, or equipment issued, but not sold, to the employee by the agency.
- (3) To falsify the employee's statement required by this Act.
- (4) To have a badge, shoulder patch, or any other identification that contains the words "law enforcement". In addition, no license holder or employee of a licensed agency shall in any manner imply that the person is an employee or agent of a governmental agency or display a badge or identification card, emblem, or uniform citing the words "police", "sheriff", "highway patrol trooper", or "law enforcement".

**225 Ill. Comp. Stat. 447/10-35 – examination of applicants; forfeiture of fee**



CHAPTER 225. PROFESSIONS AND OCCUPATIONS  
SERVICE AND SALES  
PRIVATE DETECTIVE, PRIVATE ALARM, PRIVATE SECURITY, AND LOCKSMITH ACT OF 2004  
ARTICLE 10. GENERAL LICENSING PROVISIONS

[GO TO THE ILLINOIS STATUTES ARCHIVE DIRECTORY](#)

225 ILCS 447/10-35 (2009)

§ 225 ILCS 447/10-35. (For postponed repeal of this Act, see notes under 225 ILCS 447/5-5) Examination of applicants; forfeiture of fee

Sec. 10-35. (a) Applicants for licensure shall be examined as provided by this Section if they are qualified to be examined under this Act. All applicants taking the examination shall be evaluated using the same standards as others who are examined for the respective license.

(b) Examinations for licensure shall be held at such time and place as the Department may determine, but shall be held at least twice a year.

(c) Examinations shall test the amount of knowledge and skill needed to perform the duties set forth in this Act and be in the interest of the protection of the public. The Department may contract with a testing service for the preparation and conduct of the examination.

(d) If an applicant neglects, fails, or refuses to take an examination within one year after filing an application, the fee shall be forfeited. However, an applicant may, after the one-year period, make a new application for examination, accompanied by the required fee. If an applicant fails to pass the examination within 3 years after filing an application, the application shall be denied. An applicant may make a new application after the 3-year period.

**225 Ill. Comp. Stat. 447/15-10 – qualifications for licensure as a private detective**

CHAPTER 225. PROFESSIONS AND OCCUPATIONS

SERVICE AND SALES

PRIVATE DETECTIVE, PRIVATE ALARM, PRIVATE SECURITY, AND LOCKSMITH ACT OF 2004

ARTICLE 15. PRIVATE DETECTIVES

[GO TO THE ILLINOIS STATUTES ARCHIVE DIRECTORY](#)

225 ILCS 447/15-10 (2009)

§ 225 ILCS 447/15-10. (For postponed repeal of this Act, see notes under 225 ILCS 447/5-5) Qualifications for licensure as a private detective

Sec. 15-10. (a) A person is qualified for licensure as a private detective if he or she meets all of the following requirements:

(1) Is at least 21 years of age.

(2) Has not been convicted of any felony in any jurisdiction or at least 10 years have elapsed since the time of full discharge from a sentence imposed for a felony conviction.

(3) Is of good moral character. Good character is a continuing requirement of licensure. Conviction of crimes other than felonies may be used in determining moral character, but shall not constitute an absolute bar to licensure.

(4) Has not been declared by any court of competent jurisdiction to be incompetent by reason of mental or physical defect or disease, unless a court has subsequently declared him or her to be competent.

(5) Is not suffering from dependence on alcohol or from narcotic addiction or dependence.

(6) Has a minimum of 3 years experience of the 5 years immediately preceding application working full-time for a licensed private detective agency as a registered private detective agency employee or with 3 years experience of the 5 years immediately preceding his or her application employed as a full-time investigator for a licensed attorney or in a law enforcement agency of a federal or state political subdivision, which shall include a state's attorney's office or a public defender's office. The Board and the Department shall approve such full-time investigator experience. An applicant who has a baccalaureate degree, or higher, in law enforcement or a related field or a business degree from an accredited college or university shall be given credit for 2 of the 3 years of the required experience. An applicant who has an associate degree in law enforcement or in a related field or in business from an accredited college or university shall be given credit for one of the 3 years of the required experience.

(7) Has not been dishonorably discharged from the armed forces of the United States or has not been discharged from a law enforcement agency of the United States or of any state or of any political subdivision thereof, which shall include a state's attorney's office, for reasons relating to his or her conduct as an employee of that law enforcement agency.

(8) Has passed an examination authorized by the Department.

(9) Submits his or her fingerprints, proof of having general liability insurance required under

subsection (b), and the required license fee.

(10) Has not violated Section 10-5 of this Act [[225 ILCS 447/10-5](#)].

(b) It is the responsibility of the applicant to obtain general liability insurance in an amount and coverage appropriate for the applicant's circumstances as determined by rule. The applicant shall provide evidence of insurance to the Department before being issued a license. Failure to maintain general liability insurance and to provide the Department with written proof of the insurance shall result in cancellation of the license.

(c) Any person who has been providing canine odor detection services for hire prior to January 1, 2005 is exempt from the requirements of item (6) of subsection (a) of this Section and may be granted a private detective license if (i) he or she meets the requirements of items (1) through (5) and items (7) through (10) of subsection (a) of this Section, (ii) pays all applicable fees, and (iii) presents satisfactory evidence to the Department of the provision of canine odor detection services for hire since January 1, 2005.

**225 Ill. Comp. Stat. 447/15-25 – training; private detective and employees**

CHAPTER 225. PROFESSIONS AND OCCUPATIONS  
SERVICE AND SALES  
PRIVATE DETECTIVE, PRIVATE ALARM, PRIVATE SECURITY, AND LOCKSMITH ACT OF 2004  
ARTICLE 15. PRIVATE DETECTIVES

[GO TO THE ILLINOIS STATUTES ARCHIVE DIRECTORY](#)

225 ILCS 447/15-25 (2009)

§ 225 ILCS 447/15-25. (For postponed repeal of this Act, see notes under 225 ILCS 447/5-5) Training; private detective and employees

Sec. 15-25. (a) Registered employees of a private detective agency shall complete, within 30 days of their employment, a minimum of 20 hours of training provided by a qualified instructor. The substance of the training shall be related to the work performed by the registered employee and shall include relevant information as to the identification of terrorists, acts of terrorism, and terrorist organizations, as defined by federal and State statutes.

(b) It is the responsibility of the employer to certify, on a form provided by the Department, that the employee has successfully completed the training. The form shall be a permanent record of training completed by the employee and shall be placed in the employee's file with the employer for the period the employee remains with the employer. An agency may place a notarized copy of the Department form in lieu of the original into the permanent employee registration card file. The original form shall be given to the employee when his or her employment is terminated. Failure to return the original form to the employee is grounds for disciplinary action. The employee shall not be required to repeat the required training once the employee has been issued the form. An employer may provide or require additional training.

(c) Any certification of completion of the 20-hour basic training issued under the Private Detective, Private Alarm, Private Security, and Locksmith Act of 1993 or any prior Act shall be accepted as proof of training under this Act.

**Ill. Admin. Code tit. 68, § 1240.10 – application for examination and licensure, private detective**

**Joint Committee on Administrative Rules**

**ADMINISTRATIVE CODE**

**TITLE 68: PROFESSIONS AND OCCUPATIONS**

**CHAPTER VII: DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION**

**SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS**

**PART 1240 PRIVATE DETECTIVE, PRIVATE ALARM, PRIVATE SECURITY, AND  
LOCKSMITH ACT OF 2004**

**SECTION 1240.10 APPLICATION FOR EXAMINATION AND LICENSURE – PRIVATE  
DETECTIVE**

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**Section 1240.10 Application for Examination and Licensure – Private Detective**

- a) Applications for licensure by examination, together with all supporting documentation, including verification of work experience, must be on file at least 60 days prior to the date of the examination.
- b) No candidate shall be admitted to the examination until having fulfilled the experience and/or education requirements specified in Section 15-10(a)(6) of the Act. To determine such fulfillment, the following standards shall be applied:
  - 1) The term "year" shall be 12 months with an average of at least 20 work days per month during which the applicant was engaged in full-time employment equal to 1500 hours or more annually.
  - 2) "Full-time supervisor in a law enforcement agency" shall mean a sworn peace officer serving in a full-time position responsible for the direction and performance of other law enforcement personnel.
  - 3) "Investigator in a law enforcement agency" shall mean a sworn peace officer who serves in the capacity of a full-time detective/investigator or above rank.
- c) The passing grade on the examination is 70 or above.
- d) Upon notification of successful completion of the examination, the applicant may apply to the Department of Financial and Professional Regulation-Division of Professional Regulation (Division) for licensure. The application must be complete and must be accompanied by:
  - 1) One of the following:



- A) Verification of electronic fingerprint processing from the Illinois Department of State Police or one of the Illinois State Police approved vendors. Applicants shall contact one of the approved vendors for fingerprint processing;
  - B) Out-of-state residents unable to utilize the Illinois State Police electronic fingerprint process may submit to one of the Illinois State Police approved vendors one fingerprint card issued by the Illinois State Police, accompanied by the fee specified by the vendor; or
  - C) Verification, on forms provided by the Division, of proof of retirement as a peace officer within 12 months prior to application in lieu of fingerprints. *A peace officer is defined as any person who by virtue of his/her office or public employment is vested by law with a primary duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; officers, agents or employees of the federal government commissioned by federal statute to make arrests for violations of federal criminal laws shall be considered peace officers.* (Section 5-10 of the Act) Such verification shall be signed by the applicant's employer;
- 2) Proof of at least \$1,000,000 of liability insurance held by the applicant as evidenced by a certificate of insurance from the insurer; and
  - 3) The required fees specified in Section 1240.570.
- e) A successful examination score shall be valid for 6 years. After 6 years the examination score will be void and an applicant will be required to file a new application, meeting the requirements at the time of the new application, and will be required to sit for and pass the examination.

**Private Detective and Private Security Contractor Licensure Examination Information**

## PRIVATE DETECTIVE AND PRIVATE SECURITY CONTRACTOR LICENSURE EXAMINATION INFORMATION

The following information should help you prepare for the Private Detective and Private Security Contractor licensure examinations. Part I contains general information about testing procedures. Part II describes the content of each examination and recommends study materials. Part III includes sample questions to help you prepare for these examinations.

### Part I General Information

#### **PURPOSE OF THE**

**EXAMINATIONS** These examinations are required for professional licensure of Private Detectives and Private Security Contractors by the Private Detective, Private Alarm and Private Security Act. Refer to the Act for a legal description of these professions and to determine which license(s) you need to obtain. Copies of the Act are available from the Illinois Department of Financial and Professional Regulation (IDFPR). You must pass the test for each profession in which you want to be licensed. If you wish to be licensed as a Private Alarm Contractor, consult the study guide for that examination.

#### **TEST VALIDITY &**

**TEST LENGTH** The Private Detective, Private Security Contractor and Private Alarm Contractor tests are each 90 minutes in length. A combined version that includes all of the items on the Private Detective and Private Security Contractor tests is administered with a two-hour time limit for candidates who register for both examinations. These examinations have been developed under the jurisdiction of IDFPR. Test items have been subjected to strict psychometric controls and reflect standards and practices as described by professionals in the fields of security, detection, investigation, enforcement and law.

#### **CANDIDATE**

**ELIGIBILITY** As mandated by Illinois statute, qualifications include verifiable experience in specified areas of employment and education as well as good moral character. If you wish to receive eligibility information, contact IDFPR for details.

#### **APPLICATION**

**FOR CANDIDACY** Obtain the proper application packet(s) from IDFPR. Complete the packet as instructed. You will be notified of your candidacy status (Accepted or Denied). If accepted, you will be notified of the date, time and site of the examination approximately 10 days prior to the date of the test. If you wish to take more than one of these examinations, you must file separate applications, qualify for each test, and pay the fees for each test. All three tests are given on the same day.

**REFERENCES** References for these examinations can be purchased directly from the publishers identified in Part II, from bookstores such as Barnes and Noble or Borders, their websites, or from other online sources such as Amazon.com.

#### **MISSING AN**

**EXAMINATION** There are no "make-up" examinations. You may re-register for the next examination date. **THERE ARE NO REFUNDS.** *Page 2*

**SUCCESS/**

**LICENSURE** Candidates who score 70 or higher will receive a PASS notice and an application for licensure.

**FAILURE/**

**RE-EXAMINATION** Candidates who score below 70 will receive a FAILURE notice and an application for re-examination. **As long as your employment, educational experience and application remain valid, there is no limit to the number of times you can take these tests.** Requalification may be necessary in some cases. Candidates are encouraged to retake the examination; many candidates who initially failed such an exam pass on subsequent attempts.

### Part II Test Content and Recommended Study Materials

By statute, private detectives and private security contractors must be familiar with federal and state laws, legal authority and limits, and practices and procedures in their profession. The first two sections of each examination are identical; each test also includes a section on practices and procedures for a total of 75 questions. The combined test for candidates who apply for both licenses at the same time includes 115 questions covering all of the content areas identified below.

<b>Private Detective Examination</b> <b>Security Contractor Examination</b> <b>Federal &amp; State Law</b> 23 Questions 1. Crimes and criminal statutes 2. Court practices and procedures 3. Constitutional and police powers 4. Firearm regulations and requirements 5. Professional misconduct and penalties 6. Eavesdropping and privacy protections	<b>Federal &amp; State Law</b> 23 Questions 1. Crimes and criminal statutes . Court practices and procedures 3. Constitutional and police powers 4. Firearm regulations and requirements 1. Professional misconduct and penalties 2. Eavesdropping and privacy protections
<b>Licensing &amp; Practice Requirements</b> 12 Questions 1. Qualifications and training 2. Business practices 3. Recordkeeping and reporting 4. Violations and penalties	<b>Licensing &amp; Practice Requirements</b> 12 Questions 1. Qualifications and training 2. Business practices 3. Recordkeeping and reporting 4. Violations and penalties

<p>Detective Practices 40 Questions</p> <p>Gathering Information 16 Qs</p> <ol style="list-style-type: none"> <li>1. Evaluating crime scenes</li> <li>2. Collecting and protecting evidence</li> <li>3. Interviewing and interrogation</li> <li>4. Surveillance techniques</li> </ol> <p>Case Management 12 Qs</p> <ol style="list-style-type: none"> <li>1. Investigative processes and reasoning</li> <li>2. Conducting special investigations</li> <li>3. Criminal methods, motives and trends</li> </ol> <p>Analysis, Reporting &amp; Presentation 12 Qs</p> <ol style="list-style-type: none"> <li>1. Using sources of information</li> <li>2. Forensic science and technology</li> <li>3. Presenting evidence and reports</li> </ol>	<p>Security Practices 40 Questions</p> <p>Planning &amp; Administration 10 Qs</p> <ol style="list-style-type: none"> <li>1. Security survey techniques</li> <li>2. Emergency planning and response</li> <li>3. Personnel administration</li> <li>4. Work safety and liability</li> </ol> <p>Technology &amp; Safety 12 Qs</p> <ol style="list-style-type: none"> <li>1. Security video and surveillance systems</li> <li>2. Fire protection and safety practices</li> <li>3. Intrusion detection and access control</li> <li>4. Physical security requirements</li> </ol> <p>Security Operations 18 Qs</p> <ol style="list-style-type: none"> <li>1. Loss prevention procedures</li> <li>2. Patrol techniques and traffic control</li> <li>3. Serving special clients (hotels, retail, banks, hospitals, etc.)</li> <li>4. Criminal methods, motives and trends</li> <li>5. Crime scene procedures</li> <li>6. Terrorism</li> <li>7. Workplace violence</li> </ol>
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## RECOMMENDED STUDY MATERIALS

All revisions to Illinois law as cited in this study guide and issued as of August 1, 2007, are included by reference in the study materials for these tests. Study materials for these examinations can be purchased directly from the publishers, from bookstores such as Barnes and Noble or Borders, their websites, or from online sources such as Amazon.com and bn.com.

**ALL CANDIDATES** must respond to test questions are based on information provided in the following sources. Most are available in many public libraries. Statutes, rules and other government documents also can be downloaded online.

1. *Illinois Criminal Law and Procedure Handbook, 2007 Edition*  
Illinois Compiled Statutes (ILCS), Chapters 720 and 725  
Publisher: Gould Publications  
Phone: (800) 847-6502 Website: [www.gouldlaw.com](http://www.gouldlaw.com).
2. *Private Detective, Private Alarm, Private Security and Locksmith Act and Rules*  
225 ILCS 447 and Administrative Code, Title 68, Chapter VII-b, Part 1240  
Available from: Illinois Department of Financial and Professional Regulation  
Phone: (217) 785-0800 Website: [www.idfpr.com/](http://www.idfpr.com/)
3. *Illinois Handbook of Government, 2007-08*  
U.S. and Illinois Constitutions, organization of Illinois government  
Available from: Illinois Secretary of State  
Chicago: (312) 814-2262 Springfield: (217) 782-5763  
Website: [www.sos.state.il.us](http://www.sos.state.il.us)

**PRIVATE DETECTIVE LICENSURE CANDIDATES** must respond to questions based on information provided in the following source:

*Criminal Investigation*, Seventh Edition (2007), James N. Gilbert  
Publisher: Prentice-Hall  
Phone: (800) 282-0693 Website: [www.prenhall.com](http://www.prenhall.com)

**PRIVATE SECURITY CONTRACTOR LICENSURE CANDIDATES** must respond to questions based on information provided in the following sources:

1. *Introduction to Security*, Eighth Edition (2008), Robert J. Fischer, et. al.  
Also supported by Seventh Edition (2003)  
Publisher: Butterworth Publishers  
Phone: (800) 545-2522 Website: [www.bh.com](http://www.bh.com)
2. *Principles of Security and Crime Prevention*, Fourth Edition (2000)  
Pamela A. Collins, Truett G. Ricks, Clifford W. VanMeter  
Publisher: Anderson Publishing Company  
Phone: (800) 582-7295  
Website: [www.lexisnexis.com/anderson/](http://www.lexisnexis.com/anderson/)
3. *Facility Security: New Threats, New Strategies* (2002), Paul A. Rosenberg  
Publisher: National Fire Protection Association  
Phone: (800) 344-3555 Website: [www.nfpacatalog.org](http://www.nfpacatalog.org)

### Part III Sample Test

All questions on these examinations are multiple choice with one correct answer; choose the BEST answer to each question. These questions are provided for information purposes only; questions like these will be on the tests, but none of these questions will be repeated on the examinations.

1. Which of these is **NOT** an element of robbery?
  - A. Threatening the imminent use of force
  - B. Permanently depriving another of property
  - C. Using force in the presence of another person
  - D. Taking property in the presence of another person
2. Which of these is a written order from a court directed to a peace officer, or to some other person specifically named, commanding that a person be placed under arrest?
  - A. A writ of habeus corpus
  - B. A summons
  - C. A subpoena
  - D. A warrant
3. The Illinois Constitution guarantees that a person may be imprisoned for failure to pay a criminal fine only when which of the following occurs?
  - A. The person has failed to file an appeal.
  - B. The person has been convicted of fraud.
  - C. The person has willfully failed to make payment.
  - D. The person is six months behind in an installment plan for repayment.
4. A firearms training course
  - A. must be taught by an instructor and in a school with approval from the Department of Financial and Professional Regulation.
  - B. must be taught by a licensed private detective or private security contractor.
  - C. may be waived if the applicant has any military experience.
  - D. must be completed by all detective and security personnel.

5. Which of these is the Department of Financial and Professional Regulation authorized to do when it becomes aware of an individual who is not practicing in accordance with the act and rules governing private detectives and private security contractors?
- A. Suspend a license immediately followed by a hearing within 30 days
  - B. Petition the circuit court in the county where the individual resides to impose fines and penalties for each day the licensee continues to practice
  - C. Issue a warrant for the arrest of the individual for violation of the act and rules
  - D. Subpoena the individual and all agency employees to appear at a hearing that must be held within 10 business days
6. Who is eligible to be authorized to operate eavesdropping equipment?
- A. Only active duty law enforcement officers
  - B. Any retired or active duty law enforcement officer
  - C. Any licensed private detective or security contractor
  - D. A retired law enforcement officer who is certified by the Illinois State Police
7. Which of the following does **NOT** appear on an agency employee's identification card?
- A. The date of issuance
  - B. The employee's date of licensure
  - C. The signature of the person's employer
  - D. A personal description of the employee
8. How many employees must a registered agency have to be licensed and regulated under the act and rules governing private detectives and private security contractors?
- A. One
  - B. Two
  - C. Five
  - D. Ten
9. Which of these accurately describes the consequence of failing to notify the Department of Financial and Professional Regulation of a change of address?
- A. The employee registration cards of all agency employees expire immediately after the change of address.
  - B. The agency's license automatically expires 30 days after the change of address.
  - C. The individual's license is suspended 90 days after the change of address.
  - D. Practicing with an expired license may result in disciplinary action.



10. The characteristic appearance of asphyxia victims will be noted in what portion of the body?
- A. Internal organs
  - B. Extremities
  - C. Face
  - D. Chest
11. Which of these refers to statements made during the commission of an offense?
- A. Dying declarations
  - B. Res gestae declarations
  - C. Inadmissible declarations
  - D. Nolo contendere declarations
12. Which of these is most essential in a fixed surveillance?
- A. Constant communication
  - B. Long-term memory
  - C. Patience
  - D. Agility
13. Which of the following exploits the greed of a victim?
- A. Pigeon drop swindle
  - B. Bank examiner swindle
  - C. Ignorance swindle
  - D. Internet phishing
14. Which of the following is **LEAST** important in managing a case involving informants?
- A. Keep documented records of when payments are made to the informant.
  - B. Offer the informant's services to other investigators.
  - C. Conduct frequent reviews of the informant's activities.
  - D. Complete a background check on each informant.
15. How does the Ballistic Identification System help improve investigation of cases involving firearms?
- A. By speeding up fingerprint comparisons
  - B. By testing for atomic absorption discharge
  - C. By consolidating firearm ownership records
  - D. By cataloging crime scene firearm evidence

16. Which of these is **LEAST** important in the security assessment for a personnel department?
- A. Who has access to personnel files and records?
  - B. How are computerized personnel records stored?
  - C. Are payroll records managed by an outside contractor?
  - D. Can computer files be accessed from remote locations?
17. Which of the following is the best example of applying a tort law?
- A. Armed robbery
  - B. Residential burglary
  - C. Malicious prosecution
  - D. Sexual assault
18. Which statement most accurately describes appropriate uses of CCTV systems?
- A. Cameras should be matched to the light levels available in each facility.
  - B. Coaxial cable provides the longest distance for signal transmission.
  - C. Vidicon cameras are most effective in outdoor locations.
  - D. All video surveillance requires full-time supervision.
19. What is the purpose of the two-person rule in an access control system?
- A. To assure that visitors are never admitted without an escort
  - B. To prohibit access to sensitive materials by a single person
  - C. To guarantee that secure areas are protected by at least two security personnel at all times
  - D. To require proper documentation and witnesses to all potential security violations in a facility
20. Which of the following should be considered most important in determining a client's security staffing needs?
- A. The number of employees in the client's firm
  - B. The number of guards employed by the contractor's agency
  - C. The number of access points, hours open and total area to be protected for the client
  - D. The number of people the contractor can hire quickly if the agency is awarded the client's security account
21. From a patrol standpoint, which of the following would **NOT** be considered a fixed post?
- A. Guarding a gatehouse
  - B. Securing a building lobby
  - C. Staffing a communications center

D. Walking a permanently assigned route

22. Which of these causes the greatest risk of computer crime impacting individuals?

- A. Logic bombs
- B. Identify theft
- C. A Trojan horse
- D. Software piracy

### **ANSWER KEY**

#### **Question Answer Supporting References**

- 1 B 720 ILCS 5/18-1
- 2 D 725 ILCS 5/107-1a
- 3 C Illinois Constitution, Article I, Section 14
- 4 A 225 ILCS 447/35-40; Rule 1240.30
- 5 A 225 ILCS 447/40-5
- 6 D 725 ILCS 5/108B-1
- 7 B 225 ILCS 447/35-30(f)
- 8 A 225 ILCS 447/15-15, 25-15
- 9 D Rule 1240.550
- 10 C Gilbert 7<sup>th</sup> Edition, pages 263-64
- 11 B Gilbert 7<sup>th</sup> Edition, page 521
- 12 C Gilbert 7<sup>th</sup> Edition, pages 382-86
- 13 A Gilbert 7<sup>th</sup> Edition, pages 325-28
- 14 B Gilbert 7<sup>th</sup> Edition, pages 137-40
- 15 D Gilbert 7<sup>th</sup> Edition, pages 231-33
- 16 C Fischer & Green 7<sup>th</sup> Edition, page 134
- 17 C Fischer & Green 7<sup>th</sup> Edition, pages 116-118;  
Collins, Ricks & VanMeter 4<sup>th</sup> Edition, pages 352-54
- 18 A Rosenberg, pages 57-58
- 19 B Rosenberg, pages 109-10
- 20 C Fischer & Green 7<sup>th</sup> Edition, pages 64-7;  
Collins, Ricks & VanMeter 4<sup>th</sup> Edition, page 145
- 21 D Fischer & Green 7<sup>th</sup> Edition, pages 68-9
- 22 B Fischer & Green 7<sup>th</sup> Edition, pages 406-9

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*Printed 3/2009*

## INDIANA PROCESS SERVER REQUIREMENTS

Indiana does not have any education or registration requirements for private process servers. Service of process is designated by the attorneys, otherwise the default is by mail. Indiana R. Trial P. 4(D). Service is also conducted by sheriffs and their deputies. Id.

Indiana Rule of Trial 4 Procedure (D) provides as follows:

Designation of manner of service The person seeking service or his attorney may designate the manner of service upon the summons. If not so designated, the clerk shall cause service to be made by mail or other public means provided the mailing address of the person to be served is indicated in the summons or can be determined. If a mailing address is not furnished or cannot be determined or if service by mail or other public means is returned without acceptance, the complaint and summons shall promptly be delivered to the sheriff or his deputy who, unless otherwise directed, shall serve the summons.

### **Appended applicable provision:**

- In. R Trial P. 4

## **Indiana Rule of Trial Procedure 4**

RULES OF TRIAL PROCEDURE  
II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS  
AND ORDERS  
EFFECTIVE JANUARY 1, 1970, AS AMENDED

Ind. R. Trial P. 4

Rule 4. Process.

(A) Jurisdiction over parties or persons -- In general The court acquires jurisdiction over a party or person who under these rules commences or joins in the action, is served with summons or enters an appearance, or who is subjected to the power of the court under any other law. (B) Preparation of summons and praecipe Contemporaneously with the filing of the complaint or equivalent pleading, the person seeking service or his attorney shall furnish to the clerk as many copies of the complaint and summons as are necessary. The clerk shall examine, date, sign, and affix his seal to the summons and thereupon issue and deliver the papers to the appropriate person for service. Affidavits, requests, and any other information relating to the summons and its service as required or permitted by these rules shall be included in a praecipe attached to or entered upon the summons. Such praecipe shall be deemed to be a part of the summons for purposes of these rules. Separate or additional summons shall, as provided by these rules, be issued by the clerk at any time upon proper request of the person seeking service or his attorney. (C) Form of summons The summons shall contain: (1) The name and address of the person on whom the service is to be effected

...

**(D) Designation of manner of service The person seeking service or his attorney may designate the manner of service upon the summons. If not so designated, the clerk shall cause service to be made by mail or other public means provided the mailing address of the person to be served is indicated in the summons or can be determined. If a mailing address is not furnished or cannot be determined or if service by mail or other public mean sis returned without acceptance, the complaint and summons shall promptly be delivered to the sheriff or his deputy who, unless otherwise directed, shall serve the summons.**

(E) Summons and complaint served together -- Exceptions The summons and complaint shall be served together unless otherwise ordered by the court. When service of summons is made by publication, the complaint shall not be published. When jurisdiction over a party is dependent upon service of process by publication or by his appearance, summons and complaint shall be deemed to have been served at the end of the day of last required publication in the case of service by publication, and at the time of appearance in jurisdiction acquired by appearance. Whenever the summons and complaint are not served or published together, the summons shall contain the full, unabbreviated title of the case.

## **IOWA PROCESS SERVER REQUIREMENTS**

Iowa does not have any education or registration requirements for private process servers. Iowa Rule of Civil Procedure 1.302(4) provides as follows:

Original notices may be served by any person who is neither a party nor the attorney for a party to the action. A party or party's agent or attorney may take an acknowledgment of service and deliver a copy of the original notice in connection therewith and may mail a copy of the original notice when mailing is required or permitted under any rule or statute.

### **Appended Applicable Provisions:**

- Iowa Rule of Civil Procedure 1.302

**Iowa Rule of Civil Procedure 1.302**



CHAPTER 1. RULES OF CIVIL PROCEDURE  
DIVISION III. COMMENCEMENT OF ACTIONS

Iowa R. Civ. P. 1.302 (2008)

Rule 1.302 Original notice; form, issuance and service.

A notice to the defendant, respondent, or other party against whom an action has been filed shall be served in the form and manner provided by this rule. This notice shall be called the original notice.

1.302(1) The original notice shall contain the following information:

- a. The name of the court and the names of the parties.
- b. The name, address, telephone number, and if available, the facsimile transmission number of the plaintiff's or petitioner's attorney, if any, otherwise the plaintiff's or petitioner's address.
- c. The date of the filing of the petition.
- d. The time within which these rules or statutes require the defendant, respondent, or other party to serve, and within a reasonable time thereafter file, a motion or answer.

The original notice shall also state that if the defendant, respondent or other party fails to move or answer, judgment by default may be rendered for the relief demanded in the petition. The original notice shall also include the compliance notice required by the Americans with Disabilities Act (ADA). A copy of the petition shall be attached to the original notice except when service is by publication. If service is by publication, the original notice alone shall be published and shall also contain a general statement of the claim or claims and, subject to the limitation in rule 1.403(1), the relief demanded.

1.302(2) The original notice shall be signed by the clerk and be under the seal of the court.

1.302(3) An original notice shall be served with a copy of the petition. The plaintiff is responsible for service of an original notice and petition within the time allowed under rule 1.302(5) and shall furnish the person effecting service with the necessary copies of the original notice and petition. This rule does not apply to small claims actions.

**1.302(4) Original notices may be served by any person who is neither a party nor the attorney for a party to the action. A party or party's agent or attorney may take an acknowledgment of service and deliver a copy of the original notice in connection therewith and may mail a copy of the original notice when mailing is required or permitted under any rule or statute.**

## KANSAS PROCESS SERVER REQUIREMENTS

Kansas state law provides that process can be served by “[t]he sheriff of the county in which the action is filed . . . unless a party, either personally or through an attorney, elects to undertake responsibility for service and so notifies the clerk.” Kan. Stat. Ann. § 60-303(b).

It appears that individual courts may have their own procedures related to private process servers.<sup>4</sup> For instance, Rule 14 of the Eleventh Judicial District requires one-year appointment for process servers. The Rule also requires that the applicant state under oath that they have no felony or misdemeanor convictions and that they submit with their application an affidavit from an attorney, which attests to their good reputation. The Rule further contains general guidelines, such as a requirement for professionalism and a bar on the use of force. The Third and Eighteenth Judicial Districts also have rules related to process servers.

We spoke to the First Vice President of the Kansas Sheriffs’ Association, Sheriff Vernon Chinn. Mr. Chinn mentioned that law enforcement personnel who are authorized to serve process (such as sheriffs and municipal police) receive training on civil service of process from the Kansas Law Enforcement Training Center.

No one was aware of an education or training requirement for private process servers.

### **Appended Applicable Provisions:**

- Kan. Stat. Ann. §60-303(b) – who serves process
- Rule 3.122 of the Third Judicial District
- Rule 14 of the Eleventh Judicial District
- Rule 700 of the Eighteenth Judicial District

### **Appended Applicable Materials:**

- Application and Order Appointing Special Process Servers

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<sup>4</sup> Interview with Kansas State Clerk of the Court (Apr. 15, 2009); interview with MJ Willoughby, Counsel to the Office of Judicial Administration (Apr. 15, 2009).

**Kan. Stat. Ann. § 60-303(b) – who serves process**

KANSAS ANNOTATED STATUTES

\*\*\* THIS DOCUMENT IS CURRENT THROUGH THE 2008 SUPPLEMENT \*\*\*  
\*\*\* ANNOTATIONS CURRENT THROUGH AUGUST 1, 2008 \*\*\*

CHAPTER 60. PROCEDURE, CIVIL  
ARTICLE 3. PROCESS

**[GO TO KANSAS STATUTES ARCHIVE DIRECTORY](#)**

K.S.A. § 60-303 (2008)

**Legislative Alert:**

[LEXSEE 2009 Kan. HB 2311](#) -- See sections 1 and 3.

60-303. Methods of service of process.

(a) Methods of service of process within this state, except service by publication as provided in [K.S.A. 60-307](#), and amendments thereto, are described in this section. Methods of out-of-state service of process are described in [K.S.A. 60-308](#), and amendments thereto.

Kan. Stat. Ann. 60-303 (b) Who serves process. The sheriff of the county in which the action is filed shall serve any process by any method authorized by this section, or as otherwise provided by law, unless a party, either personally or through an attorney, elects to undertake responsibility for service and so notifies the clerk.

## **Application and Order Appointing Special Process Servers**

In The District Court of \_\_\_\_\_ County, Kansas

IN THE MATTER OF  
THE APPOINTMENT OF

\_\_\_\_\_  
AS SPECIAL PROCESS SERVER

APPLICATION AND ORDER APPOINTING SPECIAL PROCESS SERVER

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, upon the oral application of the undersigned attorney, \_\_\_\_\_ is hereby appointed and authorized to serve as a Special Process Server to serve process in all cases pursuant to K.S.A. Chapters 59, 60 and 61 for a period ending \_\_\_\_\_, \_\_\_\_\_.

Signature, Judge or Clerk

Approved:

\_\_\_\_\_  
Attorney signature  
SC#

**Rule 14 of the Eleventh Judicial District**

## **RULES OF THE ELEVENTH JUDICIAL DISTRICT STATE OF KANSAS**

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### **JUDGES**

**A.J. WACHTER**, Division 1, Crawford County Judicial Center,  
602 North Locust, Pittsburg, Kansas 66762; (620) 231-3570; Fax 231-0584.  
**OLIVER KENT LYNCH**, Division 2, Cherokee County Courthouse, 100 West Maple  
Street, P. O. Box 189, Columbus, Kansas 66725-0189; (620) 429-3518;  
Fax 429-1130.  
**ROBERT J. FLEMING**, Division 3, Labette County Judicial Center, 201 South Central  
Street, Parsons, Kansas 67357; (620) 421-1410; Fax 421-3633.  
**DONALD R. NOLAND**, Division 4, Crawford County Courthouse, P. O. Box 69,  
Girard, Kansas 66743; (620) 724-6213; Fax 724-4987  
**JOHN C. GARIGLIETTI, Chief Judge**, Division 5, Crawford County Judicial  
Center, 602 North Locust, Pittsburg, Kansas 66762; (620) 231-3570; Fax 231-0584.  
**JEFFRY L. JACK**, Division 6, Labette County Judicial Center, 201 South Central  
Street, Parsons, Kansas 67357; (620) 421-3216; Fax 421-3633.  
**BILL W. LYERLA**, District Magistrate Judge, Cherokee County Courthouse, 100 West  
Maple Street, P. O. Box 189, Columbus, Kansas 66725; (620) 429-3877;  
Fax 429-1130

### **COURT ADMINISTRATOR**

**CLINTON L. HURT**, Crawford County Judicial Center, 602 North Locust, Pittsburg,  
Kansas 66762; (620) 231-0310; Fax 232-5646

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### **PREFACE**

The following rules have been adopted by the Judges of the Eleventh Judicial District of Kansas pursuant to Supreme Court Rule 105. The 11<sup>th</sup> Judicial District is composed of Cherokee, Crawford and Labette counties. Copies are on file in the office of each Clerk of the District Court in this district.

The requirements imposed by these rules upon "counsel" or "attorney" apply equally to parties appearing without counsel.

Any rule shall be subject to such modification as the presiding judge may deem appropriate and necessary to meet emergencies or to avoid injustice or undue hardship.

These rules may be amended by the judges of this judicial district. These rules and any amendments thereto shall be effective upon filing with the Clerk of the Supreme Court of Kansas pursuant to Supreme Court Rule No. 105.

### **GENERAL AND ADMINISTRATIVE**



## **RULE NO. 1**

**Required Days of Court.** The required days of court are Wednesday of every week. When such required day of court shall fall on a legal holiday, the required day of court shall be the day following such legal holiday.

## **RULE NO. 2**

### **Assignment of Cases.**

1. Generally. Assignment of cases shall be as the judges in this district shall agree.
2. Percentage Assignment Selection Process. When assignments are to be made on a percentage basis, the clerk shall establish a system that will provide for the random selection of a judges on the appropriate percentage basis. The selection and assignment shall not be made until after the case is filed.
3. Refiled Cases. Any case dismissed and refiled shall be assigned to the same judge to whom it was previously assigned.
4. Assignment of Consolidated Cases. Companion cases shall be assigned to the judge having the case with the lowest number.
5. Unavailability of Judge. When a judge is unavailable, any case assigned to that judge may be tried and any pending motion heard by any other available judge in this district on the consent and agreement of the available judge. Ex parte orders and agreed orders may be similarly granted when an assigned judge is unavailable.
6. Reassignment. When any judge has occasion to ask that a case or cases be reassigned, such reassignment shall be: a) first, by consultation and agreement between the judges who sit in the same county; b) by the method of random assignment set forth in paragraph 2 above; c) by agreement between the assigned judge and any other judge in the district; d) or by the Chief Judge.

## **RULE NO. 3**

**Clerks Office Hours:** As a general rule the District Clerk's offices shall be open to the general public from 8:00 a.m. to 5:00 p.m. each working day. The Chief Judge and/or the Court Administrator may, however, authorize the closing of any clerk's office to accommodate emergencies, weather conditions, court house closings, personnel issues or to complete accumulated filing, docketing and accounting records.

## **RULE NO. 4**

**Records, Files and Exhibits.** All files checked out to court officers, abstractors or members of the bar pursuant to Supreme Court Rule 106 shall be returned within five (5) days unless an earlier return is requested or a longer period is permitted by order of the court.

## **RULE NO. 5**

**Disposal of Subpoenaed Business Records.** When business records are subpoenaed

into the clerk's office pursuant to K.S.A. 60-245a, records not introduced into the record or made part of the record will be disposed of upon termination of the case. If return of the records has not been requested by the record custodian, the clerk will destroy said records, or they may be released to counsel of record with the written consent of the record custodian.

#### **RULE NO. 6**

**Jury Questionnaires.** Jury questionnaires shall be confidential. Jury questionnaires will be available to counsel prior to trial dates. Copies may be checked out but are to be returned to the court at the conclusion of the trial. Neither counsel nor the parties shall make any copies of juror questionnaires and all information contained therein shall remain confidential.

#### **RULE NO. 7**

**Funds Held By Clerks:** A judge of the District Court may order moneys that are deposited with a Clerk of the District Court pending final determination of an action filed in this district, be deposited in an interest bearing account in any federally insured financial institution in this district. When the action has been resolved by settlement or judicial determination, said funds shall be paid out only upon order of the court providing for distribution, division or apportionment thereof and of any interest accumulated thereon. Unless otherwise ordered, interest shall be payable to the person found to be the owner of the principal fund deposited, or if more than one owner, proportionately on the basis of the division of the principal amount.

#### **RULE NO. 8**

**Preparation of Papers:** Except as otherwise specifically directed by statute, attorneys appearing in this district shall be required to complete all summons, garnishment orders, and subpoenas. Blank forms will be provided by the clerks on request. Foreign service process papers shall be accompanied by a check in the appropriate amount payable for the fees and charges of the foreign process server. Subpoenas shall be accompanied by a check for the statutory witness and mileage fees.

#### **RULE NO. 9**

**Probable Cause Hearings During Non-business Hours.** A probable cause hearing shall, when applicable, be held in person, by telephone or facsimile with any judge in this district during non-business hours from 8:00 a.m. to 10:00 p.m., as to any person being held and entitled to such hearing within 48 hours of arrest, by contacting the judge at his home.

#### **RULE NO. 10**

**Assigned Files; Judge in Different County.** Case files shall be maintained and remain in the office of the clerk of the court where the case is filed. When a file is assigned to a

judge sitting in a county other than the county where the case is filed, the assigned judge will be mailed a copy of all pleadings in the file to the date of assignment. It will be counsel's responsibility to direct a bench copy of every item thereafter filed in the case to the assigned judge so that he can be advised of the progress of the case. All bench copies and correspondence concerning the case shall be directed to the assigned judge at the assigned judge's address.

#### **RULE NO. 11**

**Security of Court Facilities.** Anyone or anything entering a county courthouse or judicial center within this Judicial District shall be subject to search. No person, other than a law enforcement officer or other person or official as authorized and described in K.S.A. 21-4218, shall possess a firearm while on courthouse or judicial center grounds in this Judicial District. Conspicuously placed signs clearly stating this policy shall be placed in the courthouses and judicial centers in this district.

#### **RULE NO. 12**

**Media Coordinator.** The Court Administrator is designated as Media Coordinator for purposes of working with the chief judge, the trial judge and the media in implementing Kansas Supreme Court Rule 1001 with respect to electronic and photographic media coverage of judicial proceedings in this district.

#### **RULE NO. 13**

##### **Public Records Search Requests.**

Purpose. The purpose and goal of this rule is to guide the access of public records under control of the courts in this district, to protect court records from damage and disorganization, to prevent excessive disruption of court functions, to provide guidelines for requesting and obtaining information and to ensure effective and timely action in response to requests for inspection of public records. [K.S.A. 45-215 *et seq.*, K.S.A. 28-170, Kansas Supreme Court Administrative Order No. 156.]

Public Information Officer. The Eleventh Judicial District Court Administrator shall be the Public Information Officer for this judicial district.

Hours of Inspection. Public records shall be open for inspection during the time the District Clerks Offices are open to the general public.

Access to Records. Inspection requests should be made in writing on a form to be provided by the Clerk. The use of the form is encouraged but not mandatory in all circumstances. The Clerks of the Courts in this district have designated all trial court clerks as additional persons to be custodians of the records for the purposes of the Open Records Act.

Fees. The fee to be paid for a copy of any record shall be 25 cents per page and \$1.00 per certification. An access fee of \$12.00 per hour may be assessed for employee time when concentrated attention of a custodian of the records is required. Payment in advance of the custodians estimated fees may be required.

Clerks Authority. No district court employee may conduct a search that requires the making of a legal judgment or determination.

Criminal Records. Requests for criminal record searches for employment, credit or the like shall be referred to the executive branch agency most likely to have centralized reference files, e.g., the Kansas Bureau of Investigation or the Division of Vehicles.

Confidential Records. Certain court records are confidential and are excepted from public examination and disclosure under the Kansas Open Records Act. The disclosure of these records is specifically prohibited or restricted by federal law, state law or by Kansas Supreme Court Rule. Confidential records include, but are not limited, to the following:

Description of Confidential Record Authority

- Certain sections of a criminal presentence investigation report. KSA 21-4714(c)
- Expunged criminal records including diversion agreements KSA 21-4619 and juvenile offender records. KSA 38-1610
- Affidavits or sworn testimony in support of the issuance KSA 22-2302 of a search or arrest warrant or summons. KSA 22-2502
- Unserved arrest warrants in criminal cases. KSA 21-3827
- Non-moving traffic violations. KSA 8-1560d
- Grand jury proceedings. KSA 22-03012
- Certain juvenile records. KSA 38-1506 & 1607
- Adoption records. KSA 59-2122
- Certain employee personnel records. KSA 45-221(a)(4)
- Mental illness, alcohol, and drug abuse treatment records. KSA 59-2979

**PROCESS SERVERS**

**RULE NO. 14**

**Process Servers.** Process Servers appointed under the provisions of K.S.A. 60-303 and K.S.A. 61-1803 shall be appointed for no more than a period of one year, expiring on December 31 of each year for which appointed.

The appointment of a Process Server shall be limited and so state in the Order of Appointment that it is for the purpose of serving process under K.S.A., 60-303 and K.S.A. 61-1803 *without authority* to serve Writs of Execution, Orders of Attachment, Replevin Orders, Orders for Delivery, Writs of Restitution, and Writs of Assistance. The appointment may be made by any District Judge in this district.

All Process Servers shall comply with the General Guidelines for Process Servers issued by the Court, following or attached hereto, and on file in the office of the Clerk of the Court in each County in this district.

The person being appointed as a Process Server shall state in an application, under oath, that he or she has no felony or misdemeanor convictions, or list such convictions. Accompanying the Application for Appointment of Process Server shall be an affidavit by an attorney duly authorized to practice law in the State of Kansas, which attests to the good reputation of the person applying for appointment.

GENERAL GUIDELINES FOR PROCESS SERVERS  
11th Judicial District

1. Professionalism. Appointees of the Eleventh Judicial District for the service of process are expected to act in a professional manner during the execution of their assigned duties.

2. Use of Force. The use of force by process servers will not be authorized in this district.

3. A process server is expected to know the legal rights of party litigants and the rights of third persons.

4. No process server shall utilize any weapon, including a firearm, in the conduct of his or her duty except for legal self-defense.

5. The appointment by the Court of a person as a process server does not impart to them any authority to arrest.

These general guidelines do not grant any rights to process servers unless otherwise provided by law.

**DOMESTIC RELATIONS**

**RULE NO. 15**

**Mandatory Parenting in Divorce Class Attendance.** The parents of minor children who are parties to an action for divorce, annulment, separate maintenance, paternity, or otherwise, that in any manner pertains to custody or parenting time with minor children, shall attend and complete an education seminar, certified by the chief judge, concerning the emotional and psychological effect of the termination of marriages on children and/or the effect of custody and parenting time issues on their children. This rule also applies to parents involved in post-decree motions for modification of custody and/or parenting time who have not previously taken the class.

Both parents prior to trial or final hearing must complete the seminar, unless attendance is excused or deferred by the presiding judge for good cause shown.

**RULE NO. 16**

**Domestic Relations Mediation.** Unless waived by the presiding judge, any contested child custody, residency or parenting time issue shall be submitted to mediation by a neutral mediator before being scheduled for a final evidentiary hearing. This rule applies to all such actions, including those filed under the Kansas Parentage Act and may be required in Protection From Abuse actions..

**Rule 700 of the Eighteenth Judicial District**

**Rule 3.122 of the Third Judicial District**

**18<sup>th</sup> Judicial District**

**Rule 700: SERVICE OF PROCESS**

All civil process shall be directed to and served by the Sheriff of Sedgwick County unless otherwise directed by a Judge of the District Court.

### **3<sup>rd</sup> Judicial District**

## **DCR 3.122**

### **(Service and Returns of Service of Process)**

Under the terms of KSA 60-303, attorneys licensed by the Kansas Supreme Court, special process servers appointed by this Court and certain others are specially authorized to serve process.

a) Applications for Appointment of Special Process Servers. All applications for appointment of special process servers shall be made by Motion, accompanied by an Affidavit and Order. The Motion, Affidavit and Order shall be on the one page form approved by the Court [F3.122(a)].

b) Returns of Service. All special process servers, including attorneys, are required to file all returns of service with the Clerk of the District Court in the manner and within the time prescribed by statute.

c) Faxing Certain Returns. In addition to statutory return requirements, all returns of service on Temporary and Final Restraining and Injunction Orders shall also be faxed to the Clerk of the District Court and to the Sheriff of Shawnee County by noon the next business day following service. Relevant fax numbers are:

Clerk: (785) 291-4911

Sheriff: (785) 368-2385

d) Revocation of Authority. Failure to timely make, file and fax such returns of service as required by statute and this Rule, may result in the revocation by the Court of the offending person's authority to serve process.

e) Copy Provided to Server. A copy of this DCR shall be provided to each special process server upon appointment.

ADOPTED: 02-20-08

Form 3.202(h)

Motion for Appointment of Special Process Server

\_\_\_\_\_, attorney at law, hereby makes application to the court for an Order appointing \_\_\_\_\_, Topeka, Shawnee County, Kansas, who is of lawful age and meets the statutory requirements for process servers, as a Special Process Server and authorizing him or her to make service of process in cases generally for the period of \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_, pursuant to [K.S.A. 60-303] and [K.S.A. 61-3303].

Affidavit of Person to be Appointed

State of Kansas,

SS:

County of Shawnee,

I \_\_\_\_\_, am eighteen (18) years of age and have never been convicted of a crime of dishonesty or felony crime against a person.

\_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
My Appointment Expires Notary Public

Order Appointing Special Process Server

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, upon application of \_\_\_\_\_, attorney at law, \_\_\_\_\_, who is of legal age and meets the statutory requirements for process servers, is appointed as a Special Process Server and authorized to make service of process in cases generally during the period from \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_, pursuant to [K.S.A. 60-303] and [K.S.A. 61-3303].

\_\_\_\_\_  
Judge of the District Court

Prepared By:

\_\_\_\_\_

Revised: 4-17-02

**KENTUCKY PROCESS SERVER REQUIREMENTS**

Kentucky law permits the initiating party to determine by whom the summons is served. Ky. Civ. R. Rule 4.01. The party can direct the clerk to mail the summons, Rule 4.01(a), or “[c]ause the summons and complaint . . . to be transferred for service to any person authorized . . . to deliver



them.” Id. For example, § 69.360 permits certified county detectives to serve civil process, Ky. Rev. Stat. § 69.360, and § 205.782 permits service of process by constables in certain cities in cases involving child support recovery. Ky. Rev. Stat. § 205.782.

Section 454.145 of the Kentucky Revised Statutes Annotated states that the court may “for good cause” “appoint a person to serve a particular process or order, and he shall have the same power to execute it which a sheriff has.” Section 69.360 also permits certified county detectives to serve civil process.

We were unable to find any additional education requirements for private process servers by statute, regulation, or court rule. We tried but were unable to confirm that there were no education requirements for private process servers by reaching out to the Administrative Office of the Courts for the State of Kentucky.

**Appended Applicable Provisions:**

- Kentucky Civil Rule 4.01 – Summons; issuance; by whom served
- Kentucky Revised Statutes Annotated § 454.145 – court may appoint person to serve particular process
- Kentucky Revised Statutes Annotated § 69.360 – employment of county detectives; certification of county detectives in county containing consolidated local government; service of civil process by county detectives
- Kentucky Revised Statutes Annotated § 205.7782 – service of process by constable in county containing city of the first class

**Kentucky Civil Rule 4.01 – Summons; issuance; by whom served**

**Rule 4.01. Summons -- Issuance -- By whom served.**

(1) Upon the filing of the complaint (or other initiating document) the clerk shall forthwith issue the required summons and, at the direction of the initiating party, either:

(a) Place a copy of the summons and complaint (or other initiating document) to be served in an envelope, address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party, affix adequate postage, and place the sealed envelope in the United States mail as registered mail or certified mail return receipt requested with instructions to the delivering postal employee to deliver to the addressee only and show the address where delivered and the date of delivery. The clerk shall forthwith enter the facts of mailing on the docket and make a similar entry when the return receipt is received by him or her. If the envelope is returned with an endorsement showing failure of delivery, the clerk shall enter that fact on the docket. The clerk shall file the return receipt or returned envelope in the record. Service by registered mail or certified mail is complete only upon delivery of the envelope. The return receipt shall be proof of the time, place and manner of service. To the extent that the United States postal regulations permit authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by such authorized representative shall constitute service on the officer. All postage shall be advanced by the initiating party and be recoverable as costs; or

(b) Cause the summons and complaint (or other initiating document), with necessary copies, to be transferred for service to any person authorized, other than by paragraph (1) of this Rule, to deliver them, who shall serve the summons and accompanying documents, and his return endorsed thereon shall be proof of the time and manner of service.

(2) A summons may be issued for service in any county, against any person to be served, and separate or additional summons may be issued against any person to be served at the request of the initiating party.

**Kentucky Revised Statutes Annotated § 454.145 – court may appoint person to serve particular process**

KRS § 454.145 (2009)

**454.145. Court may appoint person to serve particular process.**

The court, for good cause, may appoint a person to serve a particular process or order, and he shall have the same power to execute it which a sheriff has. His return must be verified by his affidavit. He shall be entitled to the fees allowed to sheriffs for similar services.

**Kentucky Revised Statutes Annotated § 69.360 – employment of county detectives;  
certification of county detectives in county containing consolidated local government;  
service of civil process by county detectives**

**69.360. Employment of county detectives -- Certification of county detectives in county containing consolidated local government. -- Service of civil process by county detectives.**

(1) A county attorney may, as funding allows, employ one (1) or more county detectives. County detectives in counties containing a consolidated local government shall have the power of arrest in the county and the right to execute process statewide. They shall assist the county attorney in all matters pertaining to his office in the manner he designates and shall assist him in the preparation of all criminal cases in District Court by investigating the evidence and facts connected with such cases.

(2) A county detective in a county containing a consolidated local government who has the power of arrest in the county and right to execute process statewide, as set out in subsection (1) of this section, shall be certified in accordance with [KRS 15.380](#) to [KRS 15.404](#).

(3) A county detective certified in accordance with [KRS 15.380](#) to [15.404](#) shall have the right to execute civil process statewide.

(4) A county detective who is not certified in accordance with [KRS 15.380](#) to [15.404](#) shall have the right to serve civil process only in the county in which the county attorney is elected.

(5) The provisions of subsections (3) and (4) of this section shall not apply to a county detective appointed pursuant to subsections (1) and (2) of this section.

**Kentucky Revised Statutes Annotated § 205.7782 – service of process by constable in  
county containing city of the first class**



**205.782. Service of process by constable in county containing city of the first class.**

In a county containing a city of the first class, the provisions of [KRS 454.140](#) notwithstanding, including those provisions related to priority of other officers, all forms of legal process may be served in any child support action by a constable of the county upon direction by the initiating party. A constable shall not be automatically deemed an interested party in litigation merely by virtue of serving process on behalf of the Commonwealth.

## **LOUISIANA REQUIREMENTS**

Louisiana statute requires the sheriff to serve process. La. Code Civ. Pro. art. 1291. If the sheriff has not made service within five days or is unable to make service, the plaintiff may move to have the court appoint a private person to make process. La. Code Civ. Pro. art. 1293.

### **Appended Applicable Provisions:**

- Louisiana Code of Civil Procedure Article 1232. Personal Service
- Louisiana Code of Civil Procedure Article 1291. Service by Sheriff
- Louisiana Code of Civil Procedure Article 1293. Service by Private Person
- Louisiana Code of Civil Procedure Article 1314. Same; Service by Sheriff

**Louisiana Code of Civil Procedure Article 1232. Personal Service**

La. C.C.P. Art. 1232 (2008)

Art. 1232. Personal service

Personal service is made when a proper officer tenders the citation or other process to the person to be served.

**Louisiana Code of Civil Procedure Article 1291. Service by Sheriff**

La. C.C.P. Art. 1291 (2008)

Art. 1291. Service by sheriff

Except as otherwise provided by law, service shall be made by the sheriff of the parish where service is to be made or of the parish where the action is pending.

**Louisiana Code of Civil Procedure Article 1293. Service by Private Person**

La. C.C.P. Art. 1293 (2008)

Art. 1293. Service by private person

A. When the sheriff has not made service within five days after receipt of the process or when a return has been made certifying that the sheriff has been unable to make service, on motion of a party the court may appoint any person over the age of majority, not a party and residing within the state, to make service of process in the same manner as is required of sheriffs. Service of process made in this manner must be proved like any other fact in the case.

B. In serving citation of a summary proceeding as provided by Article 2592(6) or (8) or a subpoena which is related to the proceeding, on motion of a party the court shall have the discretion to appoint any person over the age of majority, not a party and residing within the state, to make service of process in the same manner as is required of sheriffs, without first requiring the sheriff to attempt service. The party making such a motion shall include the reasons, verified by affidavit, necessary to forego service by the sheriff, which shall include but not be limited to the urgent emergency nature of the hearing, knowledge of the present whereabouts of the person to be served, as well as any other good cause shown.



**Louisiana Code of Civil Procedure Article 1314. Same; Service by Sheriff**

La. C.C.P. Art. 1314 (2008)

Art. 1314. Same; service by sheriff

A. A pleading which is required to be served, but which may not be served under Article 1313, shall be served by the sheriff by either of the following:

(1) Service on the adverse party in any manner permitted under Articles 1231 through 1266.

(2) (a) Personal service on the counsel of record of the adverse party or delivery of a copy of the pleading to the clerk of court, if there is no counsel of record and the address of the adverse party is not known.

(b) Except as otherwise provided in Article 2293, service may not be made on the counsel of record after a final judgment terminating or disposing of all issues litigated has been rendered, the delays for appeal have lapsed, and no timely appeal has been taken.

B. Personal service on a partner or office associate of a counsel of record, in the office of such counsel of record shall constitute valid service under Paragraph A of this Article.

## MAINE PROCESS SERVER REQUIREMENTS

Maine Rule of Civil Procedure 4(c)(2) provides that service of the summons and complaint may be made by mailing, by a sheriff, deputy sheriff, person authorized by law, or some person specially appointed by the court for that purpose. Special appointments are to be freely made. Id.

### **Appended Applicable Provision:**

- Maine Rule of Civil Procedure 4(c) – service
-

**Maine Rule of Civil Procedure 4(c) – service**

Me. R. Civ. P. 4 (2008)

Rule 4. Process

(a) Summons: Form. The summons shall bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

(b) Same: Issuance. The summons may be procured in blank from the clerk and shall be filled out by the plaintiff's attorney as provided in subdivision (a) of this rule. The plaintiff's attorney shall deliver to the person who is to make service the original summons upon which to make return of service and a copy of the summons and of the complaint for service upon the defendant.

(c) Service. Service of the summons and complaint may be made as follows:

(1) By mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment form and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this paragraph is received by the sender within 20 days after the date of mailing, service of the summons and complaint shall be made under paragraph (2) or (3) of this subdivision.

(2) By a sheriff or a deputy within the sheriff's county, or other person authorized by law, or by some person specially appointed by the court for that purpose. Special appointments to serve process shall be made freely when substantial savings in travel fees will result.

(3) By any other method permitted or required by this rule or by statute.

## **MARYLAND PROCESS SERVER REQUIREMENTS**

Maryland does not have any education or registration requirements for private process servers. Civil service of process can be conducted by a sheriff or by a private process server (18 years or older and not a party to the action). Md. R. 3-123. Maryland Rule of Civil Procedure 3-123(a) provides as follows:

Generally. Service of process may be made by a sheriff or, except as otherwise provided in this Rule, by a competent private person, 18 years of age or older, including an attorney of record, but not by a party to the action.

Maryland has set fees for service of process by sheriffs and private process servers. Among other fees, sheriffs may receive \$40 for service of a paper. Md. Code Ann., Ct. & Jud. Proc. § 7-402(2). When service is effected by a private process server, the court may impose costs for the service of process in an amount not to exceed the fees authorized for service of process by sheriffs. § 7-404.

### **Appended Applicable Provisions:**

- Maryland Rule 3-123
- Maryland Code Ann., Courts and Judicial Proceedings § 7-402
- Maryland Code Ann., Courts and Judicial Proceedings § 7-404

**Maryland Rule 3-123**

Md. Rule 3-123 (2009)

Rule 3-123. Process -- By whom served.

(a) Generally. Service of process may be made by a sheriff or, except as otherwise provided in this Rule, by a competent private person, 18 years of age or older, including an attorney of record, but not by a party to the action.

(b) Sheriff. All process requiring execution other than delivery, mailing, or publication shall be executed by the sheriff of the county where execution takes place, unless the court orders otherwise.

(c) Elisor. When the sheriff is a party to or interested in an action so as to be disqualified from serving or executing process, the court, on application of any interested party, may appoint an elisor to serve or execute the process. The appointment shall be in writing, signed by a judge, and filed with the clerk issuing the process. The elisor has the same power as the sheriff to serve or execute the process for which the elisor was appointed and is entitled to the same fees.



**Maryland Code Ann., Courts and Judicial Proceedings § 7-402**

Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 7-402 (2008)

§ 7-402. Sheriff's fees

(a) Fees. -- Except as provided in subsections (b) and (e) of this section, a sheriff shall collect the following fees:

- (1) \$ 5 for service of summary ejectment papers.
- (2) \$ 40 for service of a paper not including an execution or attachment.
- (3) \$ 40 for service including an execution or attachment by taking into custody a person or seizing real or personal property.
- (4) \$ 40 for service of process papers arising out of administrative agency proceedings where the party requesting the service is a nongovernmental entity.
- (5) For the sale following the execution or attachment of personal property: Three percent of the first \$ 5,000; two percent of the second \$ 5,000; and one percent of any amount in excess of \$ 10,000. The sheriff shall collect a minimum of \$ 15 and a maximum of \$ 500 under the provisions of this paragraph.
- (6) For the sale following the execution or attachment of real property: One and one-half percent of the first \$ 5,000; one percent of the second \$ 5,000; and one-half of one percent of any amount in excess of \$ 10,000. The sheriff shall collect a minimum of \$ 1.50 and a maximum of \$ 250 under the provisions of this paragraph.
- (7) \$ 60 for service of a paper originating from a foreign court.

(b) Amounts specified in agreements with Child Support Enforcement Administration; cost award limitation. --

(1) For service including an execution or attachment by taking into custody a person or seizing real or personal property, a sheriff may collect the amount specified in a cooperative agreement with the Child Support Enforcement Administration under [§ 10-111 of the Family Law Article](#).

(2) As part of the costs awarded to a party under [§ 12-103 of the Family Law Article](#), a court may not award an amount greater than the amount specified in subsection (a) of this section for the cost of service including an execution or attachment by taking into custody a person or seizing real or personal property.

(c) Reimbursement of expenses. --

(1) If the sheriff incurs expenses for the purpose of conserving or protecting the seized property, the sheriff shall be reimbursed for the expense.

(2) If the Sheriff of Washington County incurs expenses for seizing property, the Sheriff shall be reimbursed by the judgment debtor for reasonable expenses.

(d) Refund of fee where sheriff unable to serve paper. --

(1) Except as provided in paragraph (2) of this subsection, if the sheriff is unable to serve a paper, 50% of the fee shall be refunded to the party requesting the service.

(2) If the sheriff is unable to serve summary ejectment papers, the full fee shall be refunded to the party requesting the service.

(e) Fees collected by Sheriff. -- A sheriff may not collect a fee for the service of:

(1) A paper from a housing authority created under Division II of the Housing and Community Development Article; or

(2) A summons for a law enforcement officer to appear as a witness in a criminal case.

**Maryland Code Ann., Courts and Judicial Proceedings § 7-404**

Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 7-404 (2008)

§ 7-404. Service of process by private process server

If the service of process by a private process server is accomplished, a judge of the District Court or a circuit court may impose costs for the service of process in an amount not to exceed the fees authorized for the service of process by a sheriff under § 7-402 of this subtitle.

## MASSACHUSETTS PROCESS SERVER REQUIREMENTS

In Massachusetts, civil process is served by sheriffs, deputy sheriffs, and constables. Mass. Ann. Laws ch. 220, § 7 (LexisNexis 2009). State statute requires that constables be appointed by mayors or selectmen. Mass. Ann. Laws ch. 41, § 91, § 91A (LexisNexis 2009). In order to be appointed as a constable, one must submit a written application which includes a statement of the applicant's moral character, signed by at least five reputable citizens of the city or town of his residence, one of whom shall be an attorney-at-law. The applicant also must pass an investigation into his fitness for the office of constable. Mass. Ann. Laws ch. 41, § 91B (LexisNexis 2009). Constables must also post a one thousand dollar bond. Mass. Ann. Laws ch. 41, § 92 (LexisNexis 2009). There are no education or training requirements for constables.

Massachusetts sets fees for sheriffs and constables. The fee for the service of civil process is \$20 for service of an original summons by "reading it or by leaving a copy thereof," Mass. Ann. Laws ch. 262, § 8(1), and \$30 "for the service of an original summons and complaint for divorce or for any other service required to be served in hand." Mass. Ann. Laws ch. 262, § 8(2).

In the city of Boston, the police department does a background check on all applicants.<sup>5</sup> Once the applicant passes the background check and meets the application and bond requirements, he is sworn in by the City Clerk.<sup>6</sup>

### **Appended Applicable Provisions:**

- Massachusetts Statute ch. 220, § 7. Sheriffs, etc., to Serve Process.
- Massachusetts Statute ch. 262, § 8. Fees of Sheriffs and Constables.
- Massachusetts Statute ch. 41, § 91. Appointment and Removal of Constables in Cities.
- Massachusetts Statute ch. 41, § 91A. Appointment of Constables in Towns.
- Massachusetts Statute ch. 41, § 91B. Appointment of Constables in Towns; Written Application of Potential Appointee.
- Massachusetts Statute ch. 41, § 92. Service of Civil Process.
- Massachusetts Statute ch. 41, § 94. Powers and Duties.
- Massachusetts Statute ch. 41, § 95A. Fees; Service of Civil Process.

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<sup>5</sup> Contact Person: Lt. Herrington, Licensing Department, Boston Police Department 617-343-4200.

<sup>6</sup> Contact Person: Kathryn Jenkins, Office of Intergovernmental Relations, 617-635-3817. See also: <http://www.cityofboston.gov/cityclerk/constable.asp>

**Massachusetts Statute ch. 220, § 7. Sheriffs, etc., to Serve Process.**

ALM GL ch. 220, § 7 (2009)

**§ 7. Sheriffs, etc., to Serve Process.**

Sheriffs, deputy sheriffs, constables and other officers shall serve all lawful processes issued by a court, judge, judicial officer or county commissioners legally directed to them.



**Massachusetts Statute ch. 262, § 8. Fees of Sheriffs and Constables.**

**§ 8. Fees of Sheriffs and Constables.**

The fees of sheriffs, deputy sheriffs and constables shall be as follows:

**(a)** for the service of civil process:

**(1)** for service of an original summons, trustee process, subpoena or scire facias, either by reading it or by leaving a copy thereof, \$20 for each defendant upon whom service is made, except as otherwise provided herein;

**(2)** for service of an original summons and complaint for divorce or for any other service required to be served in hand, \$30 for each defendant upon whom service is made;

**(3)** for attestation of each copy of a writ, precept or process, except as otherwise provided herein, \$5.

**(4)** if the officer by the direction of the plaintiff or his attorney makes a special service of a writ or precept, either by attaching personal property or arresting the body, he shall be entitled to \$2 for each defendant upon whom the writ is so served, and \$8 additional for custody of the body arrested, and at the same rate for each day during which he has such custody; provided, however, that if the officer employs an assistant in the arrest of the body, he shall be entitled to \$5 a day for such assistant;

**(5)** for the custody of personal property attached, replevied or taken on execution, not more than \$50 for each day of not more than 8 hours for the keeper while he is in charge, and not more than \$20 a day for the officer for a period not longer than 10 days; but the officer may be allowed a greater compensation for himself or his keeper, or compensation for a longer period, by the consent of the plaintiff, or by order of the court upon a hearing; provided, however, that the officer shall also be entitled to expenses for packing, labor, teaming, storage and taking and preparing a schedule of property attached, replevied or taken on execution, if he certifies that such expenses were necessary and reasonable;

**(6)** for an attachment on mesne process of land or of any leasehold estate, \$20 for each defendant against whom an attachment is made, 32 cents a mile each way for travel from the place of service to the registry and his fee for the copy deposited in the registry of deeds or land court, together with the recording fees actually paid;

**(7)** for a special attachment of real estate, \$10 additional for each person against whom an attachment is made;

**(8)** for the service of a writ of replevin: for seizure of property, \$10 for each defendant; securing and swearing appraisers, \$4, and the actual amount paid to appraisers, as hereinafter provided; examining and approving sureties, \$5; delivery of property replevied, \$5; for each service, \$5 for each copy, at the rate hereinbefore provided for copies of writs, precepts or other processes;

**(9)** for a levy on real estate:

**(i)** for preparing and serving notice of sale, a fee not to exceed \$50, plus travel;

**(ii)** For posting notices of sale, \$20, plus travel;

- (iii) the necessary expenses of advertising;
  - (iv) for the sale of land or of any leasehold estate, \$20;
  - (v) for preparing, executing and acknowledging deed, \$25; and
  - (vi) for travel, 32 cents a mile each way from the place where he receives the execution to the office of the register of deeds, and his fee for the copy;
- (10) for a sale of personal property on mesne process or on execution the following:
- (i) for service of a copy of notice to appoint appraisers, \$8 for each person upon whom service is made;
  - (ii) the necessary expenses of taking and preparing a schedule of property proposed to be sold;
  - (iii) for attendance upon and swearing appraisers, \$10;
  - (iv) the amount actually paid to appraisers as hereinafter provided;
  - (v) for preparing and posting notice of a proposed sale, \$10, plus travel;
  - (vi) the necessary expenses of keeper, labor and advertising;
  - (vii) For custody of property, \$10 a day;
  - (viii) for services as auctioneer, or for services of an auctioneer in selling property, a fair and reasonable amount;
  - (ix) if the sale is made on execution, poundage may be charged as hereinafter provided;
  - (x) the fair compensation for the services of an appraiser shall not be more than \$30 for each day's service, but the officer may be allowed a greater compensation for the appraisers by an order of the court;
  - (xi) for each adjournment of sale of real or personal property, \$10;
- (11) for taking bail and furnishing and writing the bail bond, \$2, which shall be paid by the defendant and taxed in his bill of costs if he prevails;
- (12) for serving an execution in a personal action by copy and demand on debtor or on trustee, \$10 and travel, if the execution is not collected in whole or in part; for serving an execution in a personal action, and collecting damages or costs on an execution, warrant of distress or other like process, for an amount not exceeding \$100, 10 cents for every \$1; all above \$100 and not exceeding \$500, 5 cents for every \$1; and all above \$500, 2 cents for every \$1; but such percentage shall be allowed only upon the amount actually collected. A levy of the execution upon his body shall be considered, so far as the fees of the officer are material, a full satisfaction of the execution if the debtor has recognized with surety or sureties as required by law;

**(13)** for serving a writ of seisin or possession in a real action, \$15 for each parcel;

**(14)** for serving an execution upon a judgment for partition or for assignment of dower or curtesy, \$2 per day;

**(15)** for serving a writ of capias, a writ of habeas corpus, a writ of ne exeat or other process of civil arrest in a civil proceeding, \$50, plus, upon consent of the plaintiff or upon order of the court, a greater compensation which may include the services of an assistant if necessary, plus travel;

**(16)** for serving a venire or notice to jurors for attendance upon any court, civil or criminal, \$10 for each person upon whom service is made;

**(17)** for summoning witnesses, \$20 for each person upon whom service is made and \$2 for each copy served, together with the fee paid to the witness;

**(18)** for dispersing treasurer's process warrants and proclamations of all kinds, \$4 each;

**(19)** for travel in the service of original writs, executions, warrants, summonses, subpoenas, notices and other processes, 32 cents a mile each way, to be computed from the place of service to the court or place of return; and if the same precept, or process is served upon more than 1 person, the travel shall be computed from the most remote place of service, with such further travel as was necessary in serving it; if the distance from the place of service to the place of return exceeds 20 but does not exceed 50 miles, 32 cents a mile 1 way only shall be allowed for all travel exceeding 20 miles and, if it exceeds 50 miles, only 6 cents a mile 1 way shall be allowed for all travel exceeding that distance;

**(20)** for travel in the service of venires and notices to jurors, 32 cents a mile for the distance actually traveled;

**(21)** for posting warrants, for notifying town meetings or for other purposes, \$5 for each copy posted together with 32 cents a mile for the distance actually traveled;

**(b)** for the service of criminal process:

**(1)** for serving a warrant of capias in a criminal proceeding, \$50, plus, upon consent of the plaintiff or upon order of the court, a greater compensation which may include the services of an assistant if necessary, plus travel, and of a summons upon the defendant, \$20, for each person upon whom the same is served;

**(2)** for a copy of a mittimus, warrant or other precept required by law in criminal cases, \$5;

**(3)** for service of a witness, summons or subpoena in criminal cases, \$20 plus travel in the amount of 32 cents a mile each way for a distance of not more than 20 miles, and for any excess over 20 miles, 7 cents a mile each way, and no more. The distance shall be computed from the most remote place of service to the place of return, but upon a subpoena the court shall reduce the fee for travel to a reasonable amount for the service performed if the travel charged has not been actually performed by the officer who made the service; and

**(4)** for service of an order of notice under chapter 273A, \$20.

**Massachusetts Statute ch. 41, § 91. Appointment and Removal of Constables in Cities.**

**§ 91. Appointment and Removal of Constables in Cities.**

In a city in which the city council accepts this section, or has accepted corresponding provisions of earlier laws, constables shall be appointed by the mayor for terms not exceeding three years. The mayor may, with the consent of the board of aldermen, remove a constable from office for gross misconduct.

**Massachusetts Statute ch. 41, § 91A. Appointment of Constables in Towns.**

**§ 91A. Appointment of Constables in Towns.**

The selectmen in any town may from time to time appoint, for terms not exceeding three years, as many constables as they deem necessary.



**Massachusetts Statute ch. 41, § 91B. Appointment of Constables in Towns; Written Application of Potential Appointee.**

**§ 91B. Appointment of Constables in Towns; Written Application of Potential Appointee.**

Constables shall not be appointed by mayors or selectmen under section ninety-one or ninety-one A except as hereinafter provided. A person desiring to be appointed as aforesaid shall make a written application therefor to the appointing authority stating his reasons for desiring such appointment and such information as may be reasonably required by said authority relative to his fitness for said office. Such application shall also contain a statement as to the moral character of the applicant signed by at least five reputable citizens of the city or town of his residence, one of whom shall be an attorney-at-law. The appointing authority shall also investigate the reputation and character of every applicant and his fitness for said office. The chief of police or other official having charge of the police shall upon request give the appointing authority all possible assistance in making such investigation. The office of constable shall be filled only by appointment of an applicant hereunder who is found by the appointing authority, after investigation as aforesaid, to be a person of good repute and character and qualified to hold said office.

**Massachusetts Statute ch. 41, § 92. Service of Civil Process**

**§ 92. Service of Civil Process.**

A constable who has given bond to the town in a sum of not less than one thousand dollars, with sureties approved by the selectmen, conditioned for the faithful performance of his duties in the service of all civil processes committed to him, and has filed the same, with the approval of the selectmen endorsed thereon, with the town clerk, may within his town serve any writ or other process in a personal action in which the damages are not laid at a greater sum than two hundred dollars, and in replevin in which the subject matter does not exceed in value two hundred dollars, and any writ or other process under chapter two hundred and thirty-nine. A constable who has filed such a bond, in a sum of not less than five thousand dollars, may, within his town, also serve any such writ or other process in which the damages are laid at a sum not exceeding two thousand five hundred dollars, and any process in replevin in which the subject matter does not exceed in value two thousand five hundred dollars.

**Massachusetts Statute ch. 41, § 94. Powers and Duties**

**§ 94. Powers and Duties.**

Constables may serve the writs and processes described in section ninety-two and warrants and processes in criminal cases, although their town, parish, religious society or district is a party or interested. They shall have the powers of sheriffs to require aid in the execution of their duties. They shall take due notice of and prosecute all violations of law respecting the observance of the Lord's day, profane swearing and gaming. They shall serve all warrants and other processes directed to them by the selectmen of their town for notifying town meetings or for other purposes. They may serve by copy, attested by them, demands, notices and citations, and their returns of service thereof shall be prima facie evidence; but this provision shall not exclude the service thereof by other persons.

**Massachusetts Statute ch. 41, § 95A. Fees; Service of Civil Process**

**§ 95A. Fees; Service of Civil Process.**

Constables appointed under sections 91, 91A, and 91B or otherwise elected to serve as constables in a city or town shall periodically pay the city or town in which the constable is appointed or elected 25 per cent of all fees the constable collects for the service of civil process under the fee structure established in [section 8 of chapter 262](#). This payment shall be made in installments to be deposited with the city or town treasurer not later than January 15, April 15, July 15 and October 15 of each year, but a constable having less than \$500 to deposit at that time shall hold the share for deposit until the sooner of October 15 or the time when the amount due to the city or town under this section equals or exceeds \$500. A treasurer receiving funds under this section shall deposit them into the general fund of the city or town, and they shall be expended, subject to appropriation by a majority vote of the city council in a city or by a majority vote of town meeting in a town, for any purpose which the city or town considers necessary.



## Constable Application Process

- On December 1st, The Boston Police Department contacts the City Clerk's Office for a mailing list of all the current City of Boston Constables.
- On January 2nd, a renewal form will be mailed by the Boston Police Department to all current City of Boston Constables. All renewal forms must be returned **in person** to Boston Police Headquarters, Licensing Unit, Room 104. **The application deadline is February 15th.**
- An individual wishing to become a City of Boston Constable for the **first time** may pick-up an application at Boston Police Headquarters, Licensing Unit, Room 104. **All new applications will be accepted for filing between January 2nd and February 15th ONLY. (Sgt. Raymond Mosher, Jr.)**
- The Boston Police Department's Licensing Unit will process all applications and review each applicant's background such as, criminal records check, residency and any court actions involving 209A Domestic Relation Protective Orders and then appropriate recommendations will be finalized.
- A list of City of Boston Constables is sent by the Police Department recommending approval or disapproval and then its forwarded to the Office of Intergovernmental Relations at City Hall. (Kathryn Jenkins)
- An order and transmittal letter sent by the Mayor of those recommended are presented to the City Clerk's Office to be presented to the City Council and assigned on the following Wednesday, at which time it is referred the Committee of Government Operations.
- The results of the hearing are presented to the City Council and a vote is taken to either accept or reject the recommendation of the Committee.
- The acceptance of the Committee Report by the entire City Council is then sent to the City Clerk's Office. A letter is sent by the City Clerk's Office to each applicant that has been accepted, requiring them to obtain Insurance and to file a Bond with the City of Boston Collector/Treasurer's Office.
- The Collector/Treasurer's Office approves the Bonds and they are forwarded to the City Clerk's Office for presentation to the City Council.
- Once the Bonds are approved by the City Council, they are sent to the Mayor's Office for his signature.
- The City Clerk's Office will then notify the candidates by letter of the required fee **(\$450.00 for 3 year term)** and the appropriate time to report to be sworn-in as a City of Boston Constable.

**CONTACT:** Patricia Finnigan at 617-635-2690

Copied from: <http://www.cityofboston.gov/cityclerk/constable.asp> (April 13, 2009)

## MICHIGAN PROCESS SERVER REQUIREMENTS

Michigan does not have any education or registration requirements for private process servers.

Michigan Rule of Civil Procedure 2.103(A) provides as follows:

(A) Service Generally. Process in civil actions may be served by any legally competent adult who is not a party or an officer of a corporate party.

**Appended Applicable Provisions:**

- Michigan Rule of Civil Procedure 2.103

**Michigan Rule of Civil Procedure 2.103**

## MICHIGAN COURT RULES

### MICHIGAN COURT RULES OF 1985

#### CHAPTER 2 CIVIL PROCEDURE

##### Subchapter 2.100. Commencement of Action; Service of Process; Pleadings; Motions

#### MCR 2.103 (2008)

##### Rule 2.103 Process; Who May Serve.

**(A) Service Generally. Process in civil actions may be served by any legally competent adult who is not a party or an officer of a corporate party.**

(B) Service Requiring Seizure of Property. A writ of restitution or process requiring the seizure or attachment of property may only be served by

(1) a sheriff or deputy sheriff, or a bailiff or court officer appointed by the court for that purpose,

(2) an officer of the Department of State Police in an action in which the state is a party, or

(3) a police officer of an incorporated city or village in an action in which the city or village is a party. A writ of garnishment may be served by any person authorized by subrule (A).

(C) Service in a Governmental Institution. If personal service of process is to be made on a person in a governmental institution, hospital, or home, service must be made by the person in charge of the institution or by someone designated by that person.

(D) Process Requiring Arrest. Process in civil proceedings requiring the arrest of a person may be served only by a sheriff, deputy sheriff, or police officer, or by a court officer appointed by the court for that purpose.

MCLS § 600.2555 (2009)

MCL § 600.2555

§ 600.2555. Process server; traveling fees.

Sec. 2555. A person authorized by this act or supreme court rule to serve process or a paper issued by or filed with a court in this state is only entitled to traveling fees for the service from the place where the court that issued or filed the process or paper is located to the place of service, not to exceed 75 miles each way.

MCLS § 600.1801 (2009)

MCL § 600.1801

§ 600.1801. Process; service and return; service on sheriff or deputies.

Sec. 1801. (1) When any process or order, issued by any court of record, or any complaint or other paper, is delivered to any sheriff, under-sheriff or deputy to serve, such officer shall serve the same with all convenient speed, and shall return the same with his certificate endorsed thereon, of the time and manner of such service, either to the office of the clerk of the court in which such suit or proceeding is pending, or to the attorney whose name is endorsed on the process, order, complaint or paper.

(2) In any action where an under-sheriff or deputy sheriff is a party, any process may be served on such under-sheriff or deputy sheriff, by the sheriff in person, or by any under-sheriff or deputy sheriff who is not a party to such action.

(3) When the sheriff is a party or interested in any suit, any coroner within his county may serve and execute any process, order, or any other paper in the cause, and has the same powers, and is subject to the same liabilities as sheriffs in similar cases.

(4) If the sheriff is a party in interest in any suit, service of process not requiring arrest or seizure of property may be made upon him by any person of suitable age and discretion.

MCLS § 600.1805 (2009)

MCL § 600.1805

§ 600.1805. Process; expiration or vacancy in office of sheriff; effect.

Sec. 1805. Sheriffs, under-sheriffs, and deputy sheriffs, may execute all process in their hands at the expiration of the term for which such sheriffs were elected, the execution of which having been begun by him, and shall make due returns thereof in their own name. In case of a vacancy in the office of sheriff, every deputy in office under him may execute any writ or process in his hands or in the hands of such sheriff, at the time such vacancy happened, and has the same authority, and is under the same obligation to serve and execute and return the same, as if such sheriff had continued in office.

MCLS § 600.1811 (2009)

MCL § 600.1811

§ 600.1811. Process; appointment of substitute server.

Sec. 1811. (1) The judge of any circuit court of this state may in any suit or proceeding commenced or pending therein, on the application of any party thereto, appoint some disinterested person to serve any process or other papers, or to do any act therein which the sheriff by law might do in the cause, if the sheriff and coroners of the county are parties, or interested or incapacitated to act.

(2) The appointment shall be in writing, signed by the judge, and filed in the cause. The person so appointed has the same power conferred upon him, and shall proceed in the same manner prescribed for the sheriff in the performance of like duties. The fees payable to such person shall be the same as those payable to sheriffs by virtue of the provisions of law in that behalf for like services.

(3) The judge may, in his discretion, require the person so appointed, before acting under said appointment, to give a bond to the people of this state in such penal sum, and with such surety or sureties as the judge may approve, conditioned for the faithful performance and execution by such person of his duties in such case, without fraud, deceit or oppression, and for the payment of all moneys that may come into his hands by virtue of such appointment.

(4) The person so appointed is deemed a coroner of the county, and is liable in all respects to all the provisions of law respecting sheriffs, so far as the same may be applicable.



MCLS § 600.1831 (2009)

MCL § 600.1831

§ 600.1831. Civil process; exemptions.

Sec. 1831. (1) Civil process shall not be served on an elector entitled to vote at an election during the day that election is held . However, if sufficient cause is shown by affidavit to the satisfaction of a judge , that judge may issue a restraining order or authorize the issuance and service or execution of a writ on an election day, as on other days.

(2) Civil process shall not be served or executed on a person attending a worship meeting of a religious organization that has tax exempt status under section 501(c)(3) of the internal revenue code, [26 USC 501](#), on property where the organization normally conducts its worship, or going to or coming from such a meeting within 500 feet of that property . A judge may order service or execution of process notwithstanding this subsection if, to the judge's satisfaction, sufficient cause is shown by affidavit.

## MCR 8.204 (2008)

### Rule 8.204 Bonds for Clerks, Deputies, Magistrates, and Official Process Servers.

All clerks, deputy clerks, magistrates, and official process servers of the district court must file with the chief judge a bond approved by the chief judge in a penal sum determined by the state court administrator, conditioned that the officer will

- (1) perform the duties as clerk, deputy clerk, magistrate, or process server of that court; and
- (2) account for and pay over all money which may be received by the officer to the person or persons lawfully entitled. The bonds must be in favor of the court and the state.

## **MINNESOTA PROCESS SERVER REQUIREMENTS**

Minnesota does not have any education or registration requirements for private process servers. Minnesota Rule of Civil Procedure 4.02 provides as follows:

By Whom Served. Unless otherwise ordered by the court, the sheriff or any other person not less than 18 years of age and not a party to the action, may make service of a summons or other process.

### **Appended Applicable Provisions:**

- Minnesota Rule of Civil Procedure 4.02
- Minnesota Statute § 357.21 – Services under legal process; appraisers

**Minnesota Rule of Civil Procedure 4.02**

*Minn. R. Civ. P. 4.02*

MINNESOTA STATUTES -- COURT RULES

RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS

II. COMMENCEMENT OF THE ACTION; SERVICE OF PROCESS, PLEADINGS,  
MOTIONS AND ORDERS

RULE 4. SERVICE

Minn. R. Civ. P. 4.02 (2007)

4.02 By Whom Served

Unless otherwise ordered by the court, the sheriff or any other person not less than 18 years of age and not a party to the action, may make service of a summons or other process.

**Minnesota Statute § 357.21 – Services under legal process; appraisers**

Minn. Stat. § 357.21 (2008)

**357.21 SERVICES UNDER LEGAL PROCESS; APPRAISERS**

Where no express provision is made for compensation, appraisers of property taken on writ of attachment or replevin, persons appointed under the legal process or order for making partition of real estate, sheriff's aids in criminal cases, and private persons performing like services required by law or in the execution of legal process are each entitled to \$5 per day and ten cents per mile for going and returning.

Appraisers of estates of decedents and of persons under guardianship are each entitled to such reasonable fees for services as is allowed by the judge of the district court wherein the proceeding is pending.

## **MISSISSIPPI PROCESS SERVER REQUIREMENTS**

Mississippi does not have any education or registration requirements for private process servers. Mississippi Civil Procedure 4(c)(1) provides as follows:

By process server. A summons and complaint shall, except as provided in subparagraphs (2) and (4) of this subdivision, be served by any person who is not a party and is not less than 18 years of age. When a summons and complaint are served by process server, an amount not exceeding that statutorily allowed to the sheriff for service of process may be taxed as recoverable costs in the action.

### **Appended Applicable Provisions:**

- Mississippi Rule of Civil Procedure 4
- Miss. Code Ann. § 11-9-107 – service of process by sheriff or constable
- Miss. Code Ann. § 11-9-109 – person appointed to execute process
- Miss. Code Ann. § 25-7-27 – marshals and constables
- Miss. Code Ann. § 97-9-75 – resisting service of process



**Mississippi Rule of Civil Procedure 4(c)(1)**

MISSISSIPPI RULES OF CIVIL PROCEDURE  
CHAPTER II. COMMENCEMENT OF ACTION: SERVICE OF PROCESS, PLEADINGS,  
MOTIONS, AND ORDERS

M.R.C.P. Rule 4  
(2009)

Rule 4. Summons.

(a) Summons: issuance. Upon filing of the complaint, the clerk shall forthwith issue a summons.

(1) At the written election of the plaintiff or the plaintiff's attorney, the clerk shall:

(A) Deliver the summons to the plaintiff or plaintiff's attorney for service under subparagraphs (c)(1) or (c)(3) or (c)(4) or (c)(5) of this rule.

(B) Deliver the summons to the sheriff of the county in which the defendant resides or is found for service under subparagraph (c)(2) of this rule.

(C) Make service by publication under subparagraph (c)(4) of this rule.

(2) The person to whom the summons is delivered shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff, separate or additional summons shall issue against any defendants.

(b) Same: form. The summons shall be dated and signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. Where there are multiple plaintiffs or multiple defendants, or both, the summons, except where service is made by publication, may contain, in lieu of the names of all parties, the name of the first party on each side and the name and address of the party to be served. Summons served by process server shall substantially conform to Form 1A. Summons served by sheriff shall substantially conform to Form 1AA.

**(c) Service:.**

**(1) By process server. A summons and complaint shall, except as provided in subparagraphs (2) and (4) of this subdivision, be served by any person who is not a party and is not less than 18 years of age. When a summons and complaint are served by process server, an amount not exceeding that statutorily allowed to the sheriff for service of process may be taxed as recoverable costs in the action.**

(2) By sheriff. A summons and complaint shall, at the written request of a party seeking service or such party's attorney, be served by the sheriff of the county in which the defendant resides or is found, in any manner prescribed by subdivision (d) of this rule. The sheriff shall mark on all summons the date of the receipt by him, and within thirty days of the date of such receipt of the summons the sheriff shall return the same to the clerk of the court from which it was issued.

(3) By mail.

(A) A summons and complaint may be served upon a defendant of any class referred to in paragraph (1) or (4) of subdivision (d) of this rule by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 1-B and a return envelope, postage prepaid, addressed to the sender.

(B) If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing, service of such summons and complaint may be made in any other manner permitted by this rule.

(C) Unless good cause is shown for not doing so, the court shall order the payment of the costs of personal service by the person served if such person does not complete and return within 20 days after mailing the notice and acknowledgment of receipt of summons.

(D) The notice and acknowledgment of receipt of summons and complaint shall be executed under oath or affirmation.

(4) By publication.

(A) If the defendant in any proceeding in a chancery court, or in any proceeding in any other court where process by publication is authorized by statute, be shown by sworn complaint or sworn petition, or by a filed affidavit, to be a nonresident of this state or not to be found therein on diligent inquiry and the post office address of such defendant be stated in the complaint, petition, or affidavit, or if it be stated in such sworn complaint or petition that the post office address of the defendant is not known to the plaintiff or petitioner after diligent inquiry, or if the affidavit be made by another for the plaintiff or petitioner, that such post office address is unknown to the affiant after diligent inquiry and he believes it is unknown to the plaintiff or petitioner after diligent inquiry by the plaintiff or petitioner, the clerk, upon filing the complaint or petition, account or other commencement of a proceeding, shall promptly prepare and publish a summons to the defendant to appear and defend the suit. The summons shall be substantially in the form set forth in Form 1-C.

(B) The publication of said summons shall be made once in each week during three successive weeks in a public newspaper of the county in which the complaint or petition, account, cause or other proceeding is pending if there be such a newspaper, and where there is no newspaper in the county the notice shall be posted at the courthouse door of the county and published as above provided in a public newspaper in an adjoining county or at the seat of government of the state. Upon completion of publication, proof of the prescribed publication shall be filed in the papers in

the cause. The defendant shall have thirty (30) days from the date of first publication in which to appear and defend. Where the post office address of a defendant is given, the street address, if any, shall also be stated unless the complaint, petition, or affidavit above mentioned, avers that after diligent search and inquiry said street address cannot be ascertained.

(C) It shall be the duty of the clerk to hand the summons to the plaintiff or petitioner to be published, or, at his request, and at his expense, to hand it to the publisher of the proper newspaper for publication. Where the post office address of the absent defendant is stated, it shall be the duty of the clerk to send by mail (first class mail, postage prepaid) to the address of the defendant, at his post office, a copy of the summons and complaint and to note the fact of issuing the same and mailing the copy, on the general docket, and this shall be the evidence of the summons having been mailed to the defendant.

(D) When unknown heirs are made parties defendant in any proceeding in the chancery court, upon affidavit that the names of such heirs are unknown, the plaintiff may have publication of summons for them and such proceedings shall be thereupon in all respects as are authorized in the case of a nonresident defendant. When the parties in interest are unknown, and affidavit of that fact be filed, they may be made parties by publication to them as unknown parties in interest.

(E) Where summons by publication is upon any unmarried infant, mentally incompetent person, or other person who by reason of advanced age, physical incapacity or mental weakness is incapable of managing his own estate, summons shall also be had upon such other person as shall be required to receive a copy of the summons under paragraph (2) of subdivision (d) of this rule.

(5) Service by certified mail on person outside state. In addition to service by any other method provided by this rule, a summons may be served on a person outside this state by sending a copy of the summons and of the complaint to the person to be served by certified mail, return receipt requested. Where the defendant is a natural person, the envelope containing the summons and complaint shall be marked "restricted delivery." Service by this method shall be deemed complete as of the date of delivery as evidenced by the return receipt or by the returned envelope marked "Refused."

(d) Summons and complaint: person to be served. The summons and complaint shall be served together. Service by sheriff or process server shall be made as follows:

(1) Upon an individual other than an unmarried infant or a mentally incompetent person,

(A) by delivering a copy of the summons and of the complaint to him personally or to an agent authorized by appointment or by law to receive service of process; or

(B) if service under subparagraph (1)(A) of this subdivision cannot be made with reasonable diligence, by leaving a copy of the summons and complaint at the defendant's usual place of abode with the defendant's spouse or some other person of the defendant's family above the age of sixteen years who is willing to receive service, and by thereafter mailing a copy of the summons and complaint (by first class mail, postage prepaid) to the person to be served at the

place where a copy of the summons and of the complaint were left. Service of a summons in this manner is deemed complete on the 10th day after such mailing.

(2)(A) upon an unmarried infant by delivering a copy of the summons and complaint to any one of the following: the infant's mother, father, legal guardian (of either the person or the estate), or the person having care of such infant or with whom he lives, and if the infant be 12 years of age or older, by delivering a copy of the summons and complaint to both the infant and the appropriate person as designated above.

(B) upon a mentally incompetent person who is not judicially confined to an institution for the mentally ill or mentally deficient or upon any other person who by reason of advanced age, physical incapacity or mental weakness is incapable of managing his own estate by delivering a copy of the summons and complaint to such person and by delivering copies to his guardian (of either the person or the estate) or conservator (of either the person or the estate) but if such person has no guardian or conservator, then by delivering copies to him and copies to a person with whom he lives or to a person who cares for him.

(C) upon a mentally incompetent person who is judicially confined in an institution for the mentally ill or mentally retarded by delivering a copy of the summons and complaint to the incompetent person and by delivering copies to said incompetent's guardian (of either the person or the estate) if any he has. If the superintendent of said institution or similar official or person shall certify by certificate endorsed on or attached to the summons that said incompetent is mentally incapable of responding to process, service of summons and complaint on such incompetent shall not be required. Where said confined incompetent has neither guardian nor conservator, the court shall appoint a guardian ad litem for said incompetent to whom copies shall be delivered.

(D) where service of a summons is required under (A), (B) and (C) of this subparagraph to be made upon a person other than the infant, incompetent, or incapable defendant and such person is a plaintiff in the action or has an interest therein adverse to that of said defendant, then such person shall be deemed not to exist for the purpose of service and the requirement of service in (A), (B) and (C) of this subparagraph shall not be met by service upon such person.

(E) if none of the persons required to be served in (A) and (B) above exist other than the infant, incompetent or incapable defendant, then the court shall appoint a guardian ad litem for an infant defendant under the age of 12 years and may appoint a guardian ad litem for such other defendant to whom a copy of the summons and complaint shall be delivered. Delivery of a copy of the summons and complaint to such guardian ad litem shall not dispense with delivery of copies to the infant, incompetent or incapable defendant where specifically required in (A), and (B) of this subparagraph.

(3) Upon an individual confined to a penal institution of this state or of a subdivision of this state by delivering a copy of the summons and complaint to the individual, except that when the individual to be served is an unmarried infant or mentally incompetent person the provisions of subparagraph (d)(2) of this rule shall be followed.

(4) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.

(5) Upon the State of Mississippi or any one of its departments, officers or institutions, by delivering a copy of the summons and complaint to the Attorney General of the State of Mississippi.

(6) Upon a county by delivering a copy of the summons and complaint to the president or clerk of the board of supervisors.

(7) Upon a municipal corporation by delivering a copy of the summons and complaint to the mayor or municipal clerk of said municipal corporation.

(8) Upon any governmental entity not mentioned above, by delivering a copy of the summons and complaint to the person, officer, group or body responsible for the administration of that entity or by serving the appropriate legal officer, if any, representing the entity. Service upon any person who is a member of the "group" or "body" responsible for the administration of the entity shall be sufficient.

(e) Waiver. Any party defendant who is not an unmarried minor, or mentally incompetent may, without filing any pleading therein, waive the service of process or enter his or her appearance, either or both, in any action, with the same effect as if he or she had been duly served with process, in the manner required by law on the day of the date thereof. Such waiver of service or entry of appearance shall be in writing dated and signed by the defendant and duly sworn to or acknowledged by him or her, or his or her signature thereto be proven by two (2) subscribing witnesses before some officer authorized to administer oaths. Any guardian or conservator may likewise waive process on himself and/or his ward, and any executor, administrator, or trustee may likewise waive process on himself in his fiduciary capacity. However, such written waiver of service or entry of appearance must be executed after the day on which the action was commenced and be filed among the papers in the cause and noted on the general docket.

(f) Return. The person serving the process shall make proof of service thereof to the court promptly. If service is made by a person other than a sheriff, such person shall make affidavit thereof. If service is made under paragraph (c)(3) of this rule, return shall be made by the sender's filing with the court the acknowledgment received pursuant to such subdivision. If service is made under paragraph (c)(5) of this rule, the return shall be made by the sender's filing with the court the return receipt or the returned envelope marked "Refused." Failure to make proof of service does not affect the validity of the service.

(g) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process is issued.

(h) Summons: time limit for service. If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion.

Miss. Code Ann. § 11-9-107 (2008)

§ 11-9-107. Service of process by sheriff or constable

When any process has not been returned by a constable within ten (10) working days after issuance by the clerk of the justice court, the clerk shall direct the sheriff of his county and his deputies to execute any such process of the justice court; and the sheriff and his deputies shall execute any process so directed to him by any clerk of the justice court.



Miss. Code Ann. § 11-9-109 (2008)

§ 11-9-109. Person appointed to execute process

In cases of emergency, and where a constable or sheriff or deputy sheriff cannot be had in time, the clerk of the justice court may appoint some reputable person to execute any process, the clerk to be liable on his bond for all damage which may result to a party to the cause or other person from his appointment of an insolvent or incompetent person.

Miss. Code Ann. § 25-7-27 (2008)

§ 25-7-27. Marshals and constables

(1) Marshals and constables shall charge the following fees:

(a) (i) A uniform total fee in all civil cases, whether contested or uncontested, which shall include all services in connection therewith, except as stated otherwise in this section, each.....\$ 35.00

(ii) A uniform total fee in all criminal cases, whether contested or uncontested, which shall include all services in connection therewith, except as stated otherwise in this section, each.....\$ 35.00

(iii) In all cases where there is more than one (1) defendant, for service on each additional defendant.....\$ 5.00

(iv) When a complaining party has provided erroneous information to the clerk of the court relating to the service of process on the defendant or defendants and process cannot be served after diligent search and inquiry, the uniform fee shall be assessed upon subsequent successful service and an additional fee shall be due in the following amount.....\$ 15.00

(v) When a complaining party has provided erroneous information to the clerk of the court relating to the service of process on the defendant or defendants and process cannot be served after diligent search and inquiry, and a defendant is served in a county other than the county in which a suit was filed, the constable in the county in which the suit was filed shall receive an additional fee, upon successful service of the defendant, in the following amount.....\$ 15.00

(b) After final judgment has been enrolled, further proceedings involving levy of execution on judgments, and attachment and garnishment proceedings shall be a new suit for which the marshal or constable shall be entitled to the following fee.....\$ 35.00

(c) For conveying a person charged with a crime to jail, mileage reimbursement in an amount not to exceed the rate established under Section 25-3-41(2).

To be paid out of the county treasury on the allowance of the board of supervisors, when the state fails in the prosecution, or the person is convicted but is not able to pay the costs.

(d) For other service, the same fees allowed sheriffs for similar services.

(e) For service as a bailiff in any court in a civil case, to be paid by the county on allowance of the court on issuance of a warrant therefor, an amount equal to the per diem compensation provided under Section 25-3-69 for each day, or part thereof, for which he serves as bailiff when the court is in session.

(f) For serving all warrants and other process and attending all trials in state cases in which the state fails in the prosecution, to be paid out of the county treasury on the allowance of the board of supervisors without

itemization, subject, however, to the condition that the marshal or constable must not have overcharged in the collection of fees for costs, contrary to the provisions of this section, annually.....\$ 1,800.00

(2) Marshals and constables shall be paid all uncollected fees levied under subsection (1) of this section in full from the first proceeds received by the court from the guilty party or from any other source of payment in connection with the case.

(3) In addition to the fees authorized to be paid to a constable under subsection (1) of this section, a constable may receive payments for collecting delinquent criminal fines in justice court pursuant to the provisions of Section 19-3-41(3).

Miss. Code Ann. § 97-9-75 (2008)

§ 97-9-75. Resisting service of process

Any person who knowingly and wilfully opposes or resists any officer or other authorized person in serving or attempting to serve or execute any legal writ or process, shall be guilty of a misdemeanor.

## MISSOURI REQUIREMENTS

Missouri does not have any statewide requirements for education or registration of process servers. Instead, the circuit courts in each county set their own requirements. For example, the Jackson County Circuit Court keeps a list of court approved process servers. To be on the court-approved list, a process server must submit an application and affidavit stating that he or she meets the qualifications set by the court, including no felony convictions, good moral character and a high school diploma or equivalent. A process server remains on the approved list until the end of the calendar year. If a party wants to use a process server who is not on the approved list, then he or she must file a written motion with the court requesting approval. Jackson County Circuit Court Rule 4.9.

The City of St. Louis has additional requirements for anyone who serves process within city limits. Process servers must be 21 years of age, have no felony convictions, and must attend a 12-hour training course and pass an exam administered by the Sheriff's Department. They must also have a \$100,000 liability insurance policy. The course teaches process servers about the nature of different kinds of papers and the proper methods of service.<sup>7</sup>

### **Appended Applicable Provisions:**

- Missouri Supreme Court Rule 43.01. Service of Pleadings and Other Papers
- Missouri Supreme Court Rule 54.13. Personal Service Within the State
- Missouri Supreme Court Rule 54.14. Personal Service Outside the State
- Jackson County Circuit Court Rule 4.9. Special or Private Process Servers
- Jackson County Circuit Court Form for Motion for Approval and Appointment of Private Process Server
- Jackson County Circuit Court Application and Affidavit for Placement on List of Approved Private Process Servers
- Missouri Statute § 57.470 Process of courts in St. Louis City directed to sheriff of St. Louis City for service – exception

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<sup>7</sup> Contact person: Major Thomas (314)-622-4131.

**Missouri Supreme Court Rule 43.01. Service of Pleadings and Other Papers**

Mo. Sup. Ct. R. 43.01 (2007)

43.01. Service of Pleadings and Other Papers

(a) Service - When Required. Each affected party shall be served with:

- (1) Every pleading subsequent to the original petition;
- (2) Every written motion, other than one that may be heard ex parte; and
- (3) Every written notice, appearance, demand, offer of judgment, order, and similar paper that by statute, court rule or order is required to be served.

No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons.

(b) Service - on Attorney. Whenever under these rules or any of the statutes of this state service is required or permitted to be made upon a party represented by an attorney of record, the service shall be made upon the attorney unless service upon the party is ordered by the court. When a party is represented by more than one attorney, service may be made upon any such attorney.

(c) Service - How and by Whom Made. Attorneys and non-represented parties shall state in the signature blocks of their pleadings their current mailing addresses, telephone numbers, facsimile numbers, and electronic addresses. This information shall be kept current at all times. Service may be directed to any of these addresses, except service to an electronic mail address. Service to an electronic mail address can only be made on those filing a consent to such service substantially in the form of Civil Procedure Form No. 17.

Unless otherwise ordered by the court, service required by Rules 43.01(a) and 43.01(b) may be made in the following manner:

(1) Upon the attorney:

- (A) By delivering a copy to the attorney;
- (B) By leaving a copy at the attorney's office with a clerk, receptionist, or secretary or with an attorney employed by or associated with the attorney to be served;
- (C) By facsimile transmission;
- (D) By electronic mail to a consenting attorney; or
- (E) By mailing a copy to the attorney at the attorney's last known address;

(2) Upon a party:

(A) By delivering or mailing a copy to the party;

(B) By facsimile transmission;

(C) By electronic mail to a consenting party; or

(D) By serving a copy in the manner provided for service of summons in Rule 54.13.

(d) Service - When Complete. Personal service on attorneys and non-represented parties and service by leaving a copy at the attorney's office is complete upon delivery.

Service by mail is complete upon mailing.

Service by facsimile transmission or electronic mail is complete upon transmission, except that a transmission made on a Saturday, Sunday, or legal holiday, or after 5:00 p.m. shall be complete on the next day that is not a Saturday, Sunday, or legal holiday.

(e) Service - How Shown. Service may be shown by acknowledgment of receipt, by affidavit or by written certificate of counsel making such service. Affidavits of service and counsel's certificates of service shall state the:

(1) Name of each person served;

(2) Date of service;

(3) Method of service; and

(4) Address of service, such as mailing address, facsimile number or electronic mail address.

(f) Service - Numerous Defendants. If there are unusually large numbers of defendants in an action, the court, upon motion or of its own initiative, may order that:

(1) Service of the pleadings of the defendants, and reply thereto, need not be made as between the defendants;

(2) Any cross-claim, counterclaim, or pleading constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties; and

(3) The filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties.

A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(g) Service - Time for - When No Time Specified. When provision is made for the time of filing



papers and none is made for the time of service thereof, copies shall be served on the day of filing or as soon thereafter as can be done.

(h) Service of Orders, Judgments and Other Documents. Any order, judgment or other document issued by the court may be transmitted to the attorney or party as authorized in Rule 43.01(c), provided service pursuant to Rule 54 is not required. Such documents may be transmitted to non-parties in the same manner as is authorized for service upon an attorney.

**Missouri Supreme Court Rule 54.13. Personal Service Within the State**

Mo. Sup. Ct. R. 54.13 (2007)

54.13. Personal Service Within the State

**(a) By Whom Made.** Service of process within the state, except as otherwise provided by law, shall be made by the sheriff or a person over the age of 18 years who is not a party to the action.

**(b) How and on Whom Made.** Personal service within the state shall be made as follows:

(1) On Individual. Upon an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and petition personally to the individual or by leaving a copy of the summons and petition at the individual's dwelling house or usual place of abode with some person of the individual's family over the age of fifteen years, or by delivering a copy of the summons and petition to an agent authorized by appointment or required by law to receive service of process.

(2) On Conservator. Upon an infant or disabled or incapacitated person who has a legally appointed conservator, by delivering a copy of the summons and petition to the conservator as provided in Rule 54.13(b)(1).

(3) On Corporation, Partnership or Other Unincorporated Association. Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, when it may be sued as such, by delivering a copy of the summons and petition to an officer, partner, or managing or general agent, or by leaving the copies at any business office of the defendant with the person having charge thereof or by delivering copies to its registered agent or to any other agent authorized by appointment or required by law to receive service of process.

(4) On Public or Quasi-Public Corporation or Body. Upon a public, municipal, governmental or quasi-public corporation or body, by delivering a copy of the summons and petition to the clerk of the county commission in the case of a county, to the mayor or city clerk or city attorney in the case of a city, to the chief executive officer in the case of any public, municipal, governmental or quasi-public corporation or body or to any person otherwise lawfully so designated. If no person above specified is available for service, the court out of which the process issued may designate an appropriate person to whom copies of the summons and petition may be delivered in order to effect service.

**(c) Acknowledgment of Service.** When a defendant shall acknowledge in writing, endorsed on the process, signed by the defendant's own proper signature, the service of such process, and waive the necessity of the service thereof by an officer, such acknowledgment shall be deemed as valid as service in the manner provided by law. Acknowledgment of service by mail may also be made as provided in Rule 54.16.

**(d) Where Process May Be Served in This State.** All process issued for service within this

state may be served anywhere within the state and may be forwarded to the sheriff of any county for the purpose of service.

**Missouri Supreme Court Rule 54.14. Personal Service Outside the State**

Mo. Sup. Ct. R. 54.14 (2007)

54.14. Personal Service Outside the State

**(a) By Whom Made.** Personal service outside the state shall be made:

- (1) By a person authorized by law to serve process in civil actions within the state or territory where such service is made, or by the deputy of a person so authorized;
- (2) By a person appointed by the court in which the action is pending.

**(b) Upon Whom.** The service of process shall be made as provided in Rule 54.13(b).

**(c) Acknowledgment.** Acknowledgment of service by mail may be made as provided in Rule 54.16.

**Jackson County Circuit Court Rule 4.9. Special or Private Process Servers**

## Court Rules

### **Rule 4 - Filing of Cases**

#### **Rule 4.9 - Special or Private Process Servers**

1. Any person serving process within Jackson County, Missouri, whether through appointment by the court or otherwise, must establish by affidavit that he or she meets the qualifications provided in section (3)(b) of this rule, as stated below.
2. Any party seeking to obtain service of process through any means other than the Sheriff or Department of Civil Process, shall file a written motion with the court, requesting approval and/or appointment of a named individual, which shall be accompanied by a proposed order approving the individual to serve process. Any approval or appointment of a process server shall be valid only for the case in which the order is issued.
3. Unless the individual named to serve process in the above-referenced motion is on the Court's Approved List, as provided in paragraph 4 below, the individual shall file a notarized affidavit with the motion stating the information required in section(a) below, and stating that the individual meets all of the qualifications as set out in section (b) below. Said affidavit shall not become part of the court file. All affidavits shall be maintained by the Court Administrator's Office for three years, at which time they will be destroyed.
  - a. The individual's information shall include:
    - (1) Legal name
    - (2) Current address
    - (3) Occupation and employer, and
    - (4) Telephone number
  - b. The individual must meet the following qualifications:
    - (1) Be at least eighteen (18) years of age
    - (2) Be a citizen of the United States
    - (3) Have a high school diploma or equivalent
    - (4) Not have plead guilty or been convicted of a felony or a misdemeanor involving moral turpitude
    - (5) Not be a fugitive from justice or currently charged with a felony or a misdemeanor involving moral turpitude
    - (6) Not be related to or employed by a party in the action
    - (7) Be of good moral character, and
    - (8) Not have been disqualified to act as a process server within the preceding twelve (12) months
4. For those who perform service of process within the regular course of their business, the Court Administrator shall maintain a list of qualified process servers who have been approved as such by the Presiding Judge. To be eligible for the "Approved List" an individual shall submit to the



Presiding Judge a notarized application and affidavit, containing the information required by section (3)(a) above, and setting out their qualifications (including those items listed in section (3)(b) above), their experience, and verifying that service of process is in the regular course of their employment or business. Approval by the Presiding Judge shall be good for the calendar year in which the approval is granted and shall remain effective until December 31st of that year. Applications and accompanying documentation shall be maintained by the Court Administrator's Office for three years, at which time they will be destroyed. Placement on the Approved List shall allow said individual to be approved or appointed to serve process without submitting an affidavit stating the prerequisites of section (3) above, in every case. When a party requests that a pre-approved process server be approved or appointed to serve process in a particular case, and verifies that the information contained in the qualifying affidavit is still accurate, the Court Administrator or any Deputy Court Administrator may approve or appoint such person to serve process for that case, so long as the named individual is on the Approved List. If any information in the qualifying affidavit has changed, such information must be updated with the filing of the motion, which must then be submitted to the court for a ruling. All individuals placed on the Court's Approved List will receive a registration number. That number should be included, with the individual's name, on all subsequent motions for approval or appointment.

5. A person will not be appointed to serve process if said person is deemed to be ineligible by a judge of this circuit. A person may be deemed ineligible and disqualified for:

- a. Making a false return of service
- b. Serious and purposeful improper service of process
- c. Failing to meet the criteria set out in section (3)
- d. Misrepresentation of duty or authority, or
- e. Other good cause.

6. Appointment as a special or private process server does not confer the Court's authority to carry a concealed firearm.

7. Special process servers may NOT serve garnishments, writs of sequestration, or other judgment collection proceedings, except for motions for debtor examinations and family court contempt proceedings.

8. Appropriate forms for the Motion/Order and Affidavits are available on the Court's website at [www.16thcircuit.org](http://www.16thcircuit.org).

Adopted 8/26/05

Effective 9/26/05

**Jackson County Circuit Court Form for Motion for Approval and Appointment of  
Private Process Server**

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI**  
**\_\_\_\_\_AT KANSAS CITY \_\_\_\_\_AT INDEPENDENCE**

\_\_\_\_\_  
PETITIONER/PLAINTIFF,

VS.

CASE NO. \_\_\_\_\_

\_\_\_\_\_  
RESPONDENT/DEFENDANT.

**MOTION FOR APPROVAL AND APPOINTMENT**  
**OF PRIVATE PROCESS SERVER**

COMES NOW Petitioner/Plaintiff in the above captioned matter and for its Motion for Approval/ Appointment of a Private Process Server, pursuant to Local Rule 4.9 of the Jackson County Circuit Court Rules, states to the Court as follows:

The Petitioner/ Plaintiff requests that the following individual be approved and appointed to serve process in this case:

Legal Name \_\_\_\_\_

Registration No. (if applicable) \_\_\_\_\_

The Petitioner/Plaintiff states that:

\_\_\_\_ The above-named individual is qualified to serve process in this matter and that an affidavit containing the information required by rule 4.9 and attesting to such qualifications is attached and incorporated as Exhibit "A".

\_\_\_\_ The above-named individual is on the Court's List of Approved Process Servers and all of the information contained in his/her Application and Affidavit currently on file is still correct.

\_\_\_\_ The above-named individual is on the Court's List of Approved Process Servers and the information contained in his/her Application and Affidavit needs to be updated as indicated in an attachment, provided by me herewith.

\_\_\_\_\_  
Petitioner/ Plaintiff's Signature

**ORDER**

It is hereby ordered that Petitioner/ Plaintiff's Motion for Approval and Appointment of a Private

Process server is sustained and the above-named individual is hereby approved and appointed to serve process in the above captioned matter.

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DATE

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JUDGE

**Jackson County Circuit Court Application and Affidavit for Placement on List of  
Approved Private Process Servers**

APPLICATION AND AFFIDAVIT FOR PLACEMENT ON  
**LIST OF APPROVED PRIVATE PROCESS SERVERS**

**Process Server's Information:**

Legal \_\_\_\_\_ Name: \_\_\_\_\_  
\_\_\_\_\_  
Current \_\_\_\_\_ Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone \_\_\_\_\_ Number: \_\_\_\_\_  
\_\_\_\_\_  
Primary \_\_\_\_\_ occupation: \_\_\_\_\_  
\_\_\_\_\_  
Name \_\_\_\_\_ of \_\_\_\_\_ employer: \_\_\_\_\_  
\_\_\_\_\_  
Percentage of work allocated to service of process: \_\_\_\_\_  
\_\_\_\_\_

Please describe your experience and background in performing service of process:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I, \_\_\_\_\_, being duly sworn under oath and penalty  
of perjury

(Name of Process Server)

do hereby state that I meet the following qualifications:

(Indicate with initials each qualification that applies)

\_\_\_\_ I am at least eighteen (18) years of age;

- \_\_\_\_\_ I am a citizen of the United States;
- \_\_\_\_\_ I have a high school diploma or equivalent;
- \_\_\_\_\_ I have not plead guilty or been convicted of a felony or a misdemeanor involving moral turpitude;
- \_\_\_\_\_ I am not a fugitive from justice or charged with a felony or a misdemeanor involving moral turpitude;
- \_\_\_\_\_ I am not related to or employed (except as a private process server) by a party in the action;
- \_\_\_\_\_ I am of good moral character; and
- \_\_\_\_\_ I have not been disqualified by any court to act as a process server within the preceding twelve (12) months.

\_\_\_\_\_  
Process Server's Signature

STATE OF MISSOURI     )  
COUNTY OF JACKSON    ) SS.

Subscribed and sworn to before me on \_\_\_\_\_

(Seal)

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

My Commission  
Expires: \_\_\_\_\_

Note: It is a Class A Misdemeanor to make a false affidavit for the purpose of misleading a public servant. Section 575.050 RSMo



**Missouri Statute § 57.470 Process of courts in St. Louis City directed to sheriff of St.  
Louis City for service – exception**

§ 57.470 R.S.Mo. (2009)

§ 57.470. Process of courts in St. Louis City directed to sheriff of St. Louis City for service --  
exception

All process of the circuit court in said city of St. Louis, except the municipal divisions thereof,  
shall be directed to and executed by the sheriff of said city.

## **MONTANA PROCESS SERVER REQUIREMENTS**

Under Montana law, a person who makes more than 10 services of process per year must be registered. Applicants for registration must take a test based on the handbook for process servers published by the Montana State Department of Labor and Industry. The Board of Private Security is mandated with developing and administering an examination for process server applicants.

### **Applicable Provisions:**

- Montana Statute § 25-1-1101 Registered process server – levying officer– use of title reserved
- Montana Statute § 25-1-1102 – Contents of registration certificate
- Montana Statute § 25-1-1104 – Handbook for process servers
- Montana Statute § 25-1-1107 – Proof of service – requirements
- Montana Statute § 25-1-1111 – Bond required – levy limited
- Montana Statute § 37-60-301 – License required – process server registration required
- Montana Statute § 37-60-303 – License or registration qualifications
- Montana Statute § 37-60-304 – License or registration – application form and content

### **Additional Materials:**

- Montana Handbook for Process Servers

**Montana Statute § 25-1-1101 – Registered process server – levying officer – use of title reserved**

Mont. Code Anno., § 25-1-1101 (2007)

25-1-1101 Registered process server -- levying officer -- use of title reserved.

(1) Except as provided in subsection (2), a person who makes more than 10 services of process, as defined in [25-3-101](#), within this state during 1 calendar year must be registered under Title 37, chapter 60. A process server who holds a valid certificate of registration from a clerk of court in this state as of July 1, 2007, shall present the registration certificate to the board, and the board shall exchange that registration certificate for a new certificate that expires on March 31, 2009.

(2) This part does not apply to:

(a) a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of employment; or

(b) a licensed attorney.

(3) A registered process server may act as a levying officer under Title 25, chapter 13.

(4) A registered process server may make service of process in any county in this state.

(5) A person may not use the title of process server unless the person is registered as a process server under Title 37, chapter 60.

**Montana Statute § 25-1-1102 – Contents of registration certificate**

Mont. Code Anno., § 25-1-1102 (2007)

25-1-1102 Contents of registration certificate.

The certificate of registration of a process server must contain the following statements:

- (1) the name, age, address, and telephone number of the registrant;
- (2) that the registrant has not been convicted of a felony;
- (3) that the registrant has been a resident of this state for a period of 1 year immediately preceding the filing of the certificate; and
- (4) that the registrant will perform his duties as a process server in compliance with the provisions of law governing the service of process in this state.

**Montana Statute § 25-1-1104 – Handbook for process servers**



Mont. Code Anno., § 25-1-1104 (2007)

25-1-1104 Handbook for process servers.

- (1) The department of labor and industry shall publish a handbook for process servers and levying officers.
- (2) The board of private security, established in [2-15-1781](#), shall develop and administer an examination for applicants for registration as a process server based on the handbook.
- (3) The department of labor and industry may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section.

**Montana Statute § 25-1-1107 – Proof of service – requirements**

Mont. Code Anno., § 25-1-1107 (2007)

25-1-1107 Proof of service -- requirements.

A proof of service of process signed by a registered process server must include the process server's registration number.

**Montana Statute § 25-1-1111 – Bond required – levy limited**

Mont. Code Anno., § 25-1-1111 (2007)

25-1-1111 Bond required -- levy limited.

(1) After completing the requirements in Title 37, chapter 60, for registration, a process server shall provide the board of private security with proof of a surety bond of \$ 10,000 for an individual or \$ 100,000 for a firm, conditioned upon compliance with this part, all laws governing service of process in this state, and the requirements of Title 37, chapter 60. A clerk of court holding a surety bond for a process server under this section as of June 30, 2007, shall transfer the original bond and any supporting documentation to the board on July 1, 2007.

(2) A levying officer may not levy on a judgment that exceeds the value of the bond.

Mont. Code Anno., § 2-15-1781 (2007)

2-15-1781 Board of private security.

- (1) There is a board of private security.
- (2) The board consists of seven voting members appointed by the governor with the consent of the senate. The members shall represent:
  - (a) one contract security company or proprietary security organization, as defined by [37-60-101](#);
  - (b) one electronic security company, as defined by [37-60-101](#);
  - (c) one city police department;
  - (d) one county sheriff's office;
  - (e) one member of the public;
  - (f) one member of the peace officers' standards and training advisory council; and
  - (g) a licensed private investigator or a registered process server.
- (3) Members of the board must be at least 25 years of age and have been residents of this state for more than 5 years.
- (4) The appointed members of the board shall serve for a term of 3 years. The terms of board members must be staggered.
- (5) The governor may remove a member for misconduct, incompetency, neglect of duty, or unprofessional or dishonorable conduct.
- (6) A vacancy on the board must be filled in the same manner as the original appointment and may only be for the unexpired portion of the term.
- (7) The board is allocated to the department for administrative purposes only as prescribed in [2-15-121](#).

**Montana Statute § 37-60-301 – License Required – Process Server Registration  
Required**

Mont. Code Anno., § 37-60-301 (2007)

37-60-301 License required -- process server registration required.

(1) (a) Except as provided in [37-60-105](#), it is unlawful for any person to act as or perform the duties, as defined in [37-60-101](#), of a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard without having first obtained a license from the board.

(b) Except as provided in [25-1-1101\(2\)](#), it is unlawful for any person to act as or perform the duties of a process server for more than 10 services of process in a calendar year without being issued a certificate of registration by the board.

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard.

(3) A person appointed by the court as a confidential intermediary under [42-6-104](#) is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in [42-1-103](#), without meeting the requirements of [42-6-104](#).

(4) A person who knowingly engages an unlicensed contract security company, proprietary security organization, electronic security company, branch office, private investigator, fire investigator, security alarm installer, alarm response runner, resident manager, certified firearms instructor, or private security guard is guilty of a misdemeanor punishable under [37-60-411](#).



**Montana Statute § 37-60-303 – License or registration qualifications**

Mont. Code Anno., § 37-60-303 (2007)

37-60-303 License or registration qualifications.

(1) Except as provided in subsection (7)(a), an applicant for licensure under this chapter or an applicant for registration as a process server under this chapter is subject to the provisions of this section and shall submit evidence under oath that the applicant:

- (a) is at least 18 years of age;
- (b) is a citizen of the United States or a legal, permanent resident of the United States;
- (c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;
- (d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;
- (e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;
- (f) is of good moral character; and
- (g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard, security alarm installer, or alarm response runner shall:

- (a) complete the requirements of a training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of the training; and
- (b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

- (a) is at least 21 years of age;
- (b) has at least a high school education or the equivalent;
- (c) has not been dishonorably discharged from any branch of the United States military service; and
- (d) has fulfilled any other requirements as the board may by rule prescribe.

(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.

(5) An applicant for a license as a private security patrol officer or private investigator who will wear, carry, or possess a firearm in performance of the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as the board may by rule prescribe.

(6) Except for an applicant subject to the provisions of subsection (7)(a), the board shall require a background investigation of each applicant for licensure or registration under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(7) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board or, if doing business as a process server, must be registered by the board.

(b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (7)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part or, if doing business as a process server, must be registered by the board.

**Montana Statute § 37-60-304 – License or registration – application form and content**

Mont. Code Anno., § 37-60-304 (2007)

37-60-304 Licenses and registration -- application form and content.

- (1) An application for a license or for a certificate of registration as a process server must be submitted to the department and accompanied by the application fee set by the board.
- (2) An application must be made under oath and must include:
  - (a) the full name and address of the applicant;
  - (b) the name under which the applicant intends to do business;
  - (c) a statement as to the general nature of the business in which the applicant intends to engage;
  - (d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a certified firearms instructor, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, or a private security guard or registered as a process server;
  - (e) except for an applicant pursuant to [37-60-303\(7\)\(a\)](#), one recent photograph of the applicant, of a type prescribed by the department, and one classifiable set of the applicant's fingerprints;
  - (f) a statement of the applicant's age and experience qualifications, except for an applicant pursuant to [37-60-303\(7\)\(a\)](#); and
  - (g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.
- (3) The board shall verify the statements in the application.
- (4) The submittal of fingerprints is a prerequisite to the issuance of a license or certificate of registration to an applicant, other than an applicant under [37-60-303\(7\)\(a\)](#), by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

# **HANDBOOK FOR PROCESS SERVERS**

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## HANDBOOK FOR PROCESS SERVERS

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## **HANDBOOK FOR PROCESS SERVERS**

In 1987 the Montana legislature enacted legislation creating the occupation of registered process server and levying officer. The purpose of this pamphlet is to acquaint the applicant with the legal requirements of that legislation and the duties and responsibilities of process servers and levying officers. These duties and responsibilities are demanding and complex. This pamphlet is not a definitive text. It is an introduction. The law affecting process servers and levying officers is constantly changing and a registered process server must be vigilant to stay current in the area. Nor does this pamphlet contain any legal interpretations of the statutes cited. Anyone considering conducting the business of a process server and particularly a levying officer should consult with private counsel to determine the legal rights and responsibilities of a levying officer.

This pamphlet is not intended to offer practical suggestions for accomplishing service of process or levying pursuant to writs of execution. However, clear, detailed and exact instructions from the person requesting the service or levy are essential. These instructions are generally included in a document called a "praecipe" (praecipe originally meant a request to the clerk of court to take some action; however, now it has generalized to include a request for process servers or levying officers to take some action). It does not appear that a praecipe is required. A registered process server is required to receive any summons or other process at the point where directed to the process server and to serve the same; if not, the process server is guilty of a misdemeanor and upon conviction thereof must be fined in any sum not exceeding \$100. Mont. Code Ann. § 25-3-201 (3).

This pamphlet cannot address deficiencies in the legislation creating the position of levying officer. For example, § 25-23-402 gives levying officers the power to sell property which has been levied upon, however the statutes do not provide a method by which a registered process server sells the property levied upon. A sheriff has a very specific method, called a Sheriff's Sale, for selling property levied upon. Mont. Code Ann. § 25-13-701-714. The sheriff's sale provisions have not been amended and there is no statute which requires the sheriff to sell property levied on by a levying officer.

**Scope:** The legislation appears to affect only the service of process issued by the district court and writs of execution issued by the district court.

### **Requirements, Qualification and Provisions for a Process Server or Levying Officer**

What are the requirements and qualifications for a registered process server or levying officer?

**25-1-1101. Registered process server -- levying officer.** (1) Any person who makes more than 10 services of process, as defined in [25-3-101](#), within this state during 1 calendar year shall file a verified certificate of registration as a process

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server with the clerk of the district court of the county in which he resides or has his principal place of business.

(2) This part does not apply to:

(a) a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of his employment; or

(b) a licensed attorney.

(3) A registered process server may act as a levying officer under Title 25, chapter 13. History: En. Sec. 1, Ch. 548, L. 1987.

**25-1-1102. Contents of registration certificate.** The certificate of registration of a process server must contain the following statements:

(1) the name, age, address, and telephone number of the registrant;

(2) that the registrant has not been convicted of a felony;

(3) that the registrant has been a resident of this state for a period of 1 year immediately preceding the filing of the certificate; and

(4) that the registrant will perform his duties as a process server in compliance with the provisions of law governing the service of process in this state. History: En. Sec. 2, Ch. 548, L. 1987.

**25-1-1103. Fee -- duration of certificate.** (1) A certificate of registration as a process server must be accompanied by a fee of \$100 at the time the certificate is filed. The fee must be deposited in the county general fund for district court operations, unless the county has a district court fund. If the county has a district court fund, the fee must be deposited in that fund.

(2) A certificate of registration is effective for a period of 2 years from the date of filing. A new certificate must be filed upon expiration of a certificate and a new registration fee must accompany the new certificate. History: En. Sec. 3, Ch. 548, L. 1987.

**25-1-1104. Handbook for process servers.** (1) The department of commerce shall publish a handbook for process servers and levying officers.

(2) Each person who applies to the clerk of the district court of any county for registration as a process server must demonstrate that he has passed an examination based on the handbook and administered by the board of private security patrol officers and investigators provided for in [2-15-1891](#).

(3) The department of commerce may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination

provided for in this section. History: En. Sec. 4, Ch. 548, L. 1987; amd. Sec. 1, Ch. 217, L. 1989.

**25-1-1105. List of process servers -- identification.** (1) The clerk of the district court shall maintain a list of all process servers registered in the county. The clerk of the district court shall assign a number to each registered process server. Upon renewal of a certificate of registration, the same number may be assigned.

(2) During the course of serving process or acting as a levying officer, a registered process server must have in his possession an identification card with the number assigned under subsection (1) and a photograph of the registered process server. The clerk of the district court shall furnish the identification card, the cost of which must be reimbursed by the process server. History: En. Sec. 5, Ch. 548, L. 1987.

**25-1-1106. Revocation or suspension of certificate.** (1) A certificate of registration of a registered process server may be revoked or suspended by the county attorney of the county of registration whenever the registrant makes a service of process not complying with the law.

(2) The county attorney may conduct an investigation concerning the revocation or suspension of a certificate based on the complaint of a person alleging injury caused by improper service of process by the registrant.

(3) The county attorney shall notify the clerk of the district court when a certificate of registration is suspended, revoked, or reinstated. History: En. Sec. 8, Ch. 548, L. 1987.

**25-1-1107. Proof of service -- requirements.** A proof of service of process signed by a registered process server must indicate the county in which he is registered and the number assigned to him under [25-1-1105](#). History: En. Sec. 9, Ch. 548, L. 1987.

**25-1-1111. Bond required.** (1) The clerk of the district court may not accept a certificate of registration as a process server unless the certificate is accompanied by a surety bond of \$10,000 per individual or \$100,000 per firm, conditioned upon compliance with this part and all laws governing service of process in this state.

(2) A levying officer may not levy on a judgment that exceeds the value of the bond. History: En. Sec. 6, Ch. 548, L. 1987.

**25-1-1112. Action on bond.** (1) Any person who recovers damages for an injury caused by a service of process, made by a registered process server, that did not comply with the law governing service of process in this state may recover the amount of damages from the bond required under [25-1-1111](#).

(2) If there has been recovery against a registered process server's bond, the registrant must file a new bond within 30 days or reinstate the bond. If the bond has not been reinstated or filed within 30 days, the county attorney must revoke the registrant's certificate. History: En. Sec. 7, Ch. 548, L. 1987.

### What is Process?

Process includes all writs, warrants, summonses, and orders of courts of justice or judicial officers. Mont. Code Ann. § 25-3-101(1).

Why is the service of process necessary?

To give notice of judicial actions to all involved parties and to establish a court's jurisdiction over a person.

How is service of process accomplished?

The service of process in the district court is governed primarily by Rules 4 and 5 of the Montana Rules of Civil Procedure. Rules 4C and 4D of the Montana Rules of Civil Procedure read as follows:

**Rule 4C. Process. (1) Summons -- issuance.** Upon or after filing the complaint, the plaintiff or, if the plaintiff is represented by an attorney, the plaintiff's attorney shall present a summons to the clerk for issuance. If the summons is in proper form, the clerk shall issue it and deliver it to the plaintiff or to the plaintiff's attorney who shall thereafter deliver it for service upon the defendant in the manner prescribed by these rules. Issuance and service of the summons shall be accomplished within the times prescribed by Rule 4E of these rules. Upon request, the clerk shall issue separate or additional summons against any parties designated in the original action, or against any additional parties who may be brought into the action, which separate or additional summons shall also be served in the manner and within the times prescribed by these rules. The party requesting issuance of the summons shall bear the burden of having it properly issued and served and filed with the clerk.

**(2) Summons -- form.** The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of the defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint. In an action brought to quiet title to real estate, there shall be added to the foregoing, the following: "This action is brought for the purpose of quieting title to land situated in ... County, Montana, and described as follows: (Here insert descriptions of land.)." For exceptions to this form of summons see 4D(4) "Other service," set forth hereinafter. History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct.

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Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Jan. 7, 1997, eff. Feb. 14, 1997; amd. Sup. Ct. Ord. Sept. 28, 1999, eff. Jan. 1, 2000.

**Rule 4D. Service. (1) By whom served.** (a) Service of all process shall be made in the county where the party to be served is found by a sheriff, deputy sheriff, constable, or any other person over the age of 18 not a party to the action.

(b) (i) A summons and complaint may also be served upon a defendant who is an individual other than a minor or an incompetent person or upon a domestic or foreign corporation or partnership or other unincorporated association by mailing a copy of the summons and complaint (by first class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to form 18-A and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing the summons and complaint, service of such summons and complaint shall be made by one of the persons mentioned in Rule 4D(1)(a) in the manner prescribed by Rule 4D(2) and Rule 4D(3).

(ii) Unless good cause is shown for not doing so, the court shall order the payment of costs of the personal service by the person served if such person does not complete and return within 20 days after mailing, the notice and acknowledgment of receipt of summons.

(iii) The notice and acknowledgment of receipt of summons and complaint shall be signed and dated. Service of summons and complaint will be deemed complete on the date of signature of the defendant as shown on the acknowledgment.

**(2) Personal service within the state.** The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(a) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given.

(b) Upon a minor over the age of 14 years, by delivering a copy of the summons and complaint to the minor personally, and by leaving a copy thereof at the minor's dwelling house or usual place of abode with some adult of suitable discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

(c) Upon a minor under the age of 14 years, by delivering a copy of the summons and complaint to the minor's guardian, if the minor has one within the state, and if not, then to the minor's father or mother or other person or agency having the minor's care or control, or with whom the minor resides, or if service cannot be made upon any of them, then as provided by order of the court.

(d) Upon a person who has been adjudged of unsound mind by a court of this state, or for whom a guardian has been appointed in this state by reason of incompetency, by delivering a copy of the summons and complaint to the person's guardian, if there be a guardian residing in this state appointed and acting under the laws of this state. If there be no such guardian, the court shall appoint a guardian ad litem for the incompetent person, with or without personal service on the incompetent, as the court may direct. When a party is alleged to be of unsound mind, but has not been so adjudged by a court of this state, such party may be brought into court by service of process personally upon that party. The court may also stay any action pending against a person on learning that such person is of unsound mind.

(e) Upon a domestic corporation, limited liability company, partnership or other unincorporated association, or upon a foreign corporation, limited liability company, partnership or other unincorporated association, established by the laws of any other state or country, and having a place of business within this state or doing business herein either permanently or temporarily, or which was doing business herein either permanently, or temporarily at the time the claim for relief accrued: (i) by delivering a copy of the summons and complaint to an officer, director, manager, member of a member-managed limited liability company, superintendent or managing or general agent, or partner, or associate for such corporation, limited liability company, partnership, or association; or by leaving such copies at the office or place of business of the corporation, limited liability company, partnership, or association within the state with the person in charge of such office; or (ii) by delivering a copy of the summons and complaint to the registered agent of said corporation or limited liability company named on the records of the secretary of state, or to any other agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, limited liability company, partnership, or association, provided that if the agent or attorney in fact is one designated by statute to receive service, such further notice as the statute requires shall also be given; or (iii) if the sheriff shall make return that no person upon whom service may be made can be found in the county, then service may be made by leaving a copy of the summons and complaint at any office of the corporation, limited liability company, partnership, or unincorporated association within this state with the person in charge of such office; or (iv) if the suit is against a corporation or limited liability company whose charter or right to do business in the state has expired or been forfeited, by delivering a copy thereof to any one of the persons who have become trustees for the corporation or limited liability company and its stockholders or members.

(f) When a claim for relief is pending in any court of this state against a corporation or limited liability company organized under the laws of this state, or

against a corporation or limited liability company organized under the laws of any other state or country, that has filed a copy of its charter in the office of the secretary of state of Montana and qualified to do business in Montana; or against a corporation or limited liability company organized under the laws of any other state or country which is subject to the jurisdiction of the courts of this state under the provisions of Rule 4B above, even though such corporation or limited liability company has never qualified to do business in Montana; or against a national banking corporation which, through insolvency or lapse of charter, has ceased to do business in Montana; and none of the persons designated in D(2)(e) immediately above can with the exercise of reasonable diligence be found within Montana, the party causing summons to be issued shall exercise reasonable diligence to ascertain the last known address of any such person. Upon the filing with the clerk of court in which the claim for relief is pending of an affidavit reciting that none of the persons designated in D(2)(e) can after due diligence be found within Montana upon whom service of process can be made, and reciting the last known address of any such person, or reciting that after the exercise of reasonable diligence no such address for any such person could be found, and there has also been deposited with the said clerk the sum of \$5 to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive said service, then the clerk of court shall issue an order directing process to be served upon the secretary of state of the state of Montana or, in the secretary of state's absence from the secretary of state's office, upon the deputy secretary of state of the state of Montana. Such affidavit shall be sufficient evidence of the diligence of inquiry made by affiant, if the affidavit recites that diligent inquiry was made, and the affidavit need not detail the facts constituting such inquiry. Whenever service is also to be made through publication as provided in 4D(5), or upon other persons as provided in 4D(6), the affidavit herein required may be combined in the same instrument with the affidavit required under 4D(5)(c) and 4D(6). The said clerk of court shall then mail to the secretary of state the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service, to the office of the secretary of state. The secretary of state shall mail copy of the summons and complaint by certified or registered mail with a return receipt requested to the last known address of any of the persons designated in D(2)(e) above, if known, or, if none such is known and it is a corporation not organized in Montana, to the secretary of state of the state in which such corporation or limited liability company was originally incorporated, if known; and the secretary of state shall make a return as hereinafter provided under Rule 4D(6). When service is so made, it shall be deemed personal service on such corporation or limited liability company, and the said secretary of state, or a deputy when the secretary is absent from the secretary of state's office, is hereby appointed agent of such corporation or limited liability company for service of process in cases hereinbefore mentioned. In any action where due diligence has been exercised to locate and serve any of the persons designated in D(2)(e) above, service shall be deemed complete upon said corporation or limited liability company regardless of the receipt of any return receipt or advice of refusal of the

addressee to receive the process mailed, as is hereinafter required by 4D(6); provided, however, that except in those actions where any of the persons designated in D(2)(e) above have been located and served personally as hereinabove provided, then service by publication shall also be made as provided hereafter in 4D(5)(d) and 4D(5)(h); the first publication must be made within 60 days from the date the original summons is mailed to the secretary of state as herein provided, and if said first publication is not so made, the action shall be deemed dismissed as to any such party intended to be served by such publication; and service shall be complete upon the date of the last publication of summons.

When service of process is made as herein provided, and there is no appearance thereafter made by any attorney for such corporation or limited liability company, service of all other notices required by law to be served in such action may be served upon the secretary of state.

(g) Upon a city, village, town, school district, county, or public agency or board of any such public bodies, by delivering a copy of the summons and complaint to any commissioner, trustee, board member, mayor or head of the legislative department thereof.

(h) Upon the state, or any state board or state agency, by delivering a copy of the summons and complaint to the attorney general and to any other party which may be prescribed by statute.

(i) Upon an estate by delivering a copy of the summons and complaint to the personal representative thereof; upon a trust by delivering a copy of the summons and complaint to any trustee thereof.

**(3) Personal service outside the state.** Where service upon any person cannot, with due diligence, be made personally within this state, service of summons and complaint may be made by service outside this state in the manner provided for service within this state, with the same force and effect as though service had been made within this state. Where service by publication is permitted as hereinafter provided, personal service of a summons and complaint upon the defendant out of the state shall be equivalent to and shall dispense with the procedures and the publication and mailing provided for hereafter in 4(5)(c), 4(5)(d) and 4(5)(e) of this rule.

**(4) Other service.** All process in any form of action shall be served in the manner specified in this rule with the exception that whenever a statute of this state or an order of the court or a citation by the court made pursuant thereto provides for the service of a notice or of an order or of a citation in lieu of summons upon any person, service shall be made under the circumstances and in the manner prescribed by the statute or order or citation; and with the further exception that all persons are required to comply with the provisions hereafter prescribed in D(5)(h), and with the provisions of [33-1-603](#), [33-1-613](#), [33-1-614](#),



[33-2-314](#), [33-2-315](#), [70-28-207](#), [70-28-208](#), [70-28-209](#), and [70-28-212](#), Montana Code Annotated, when the action pertains to the provisions of such sections.

**(5) Service by publication -- when permitted -- effect -- manner -- proof. (a) When permitted.** A defendant, whether known or unknown, who has not been served under the foregoing subsections of this rule can be served by publication in the following situations only:

(i) When the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest therein. This subsection shall apply whether any such defendant is known or unknown.

(ii) When the action is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real or personal property within this state.

(iii) When the action is for dissolution or for a declaration of invalidity of a marriage of a resident of this state or for modification of a decree of dissolution granted by a court of this state.

(iv) When the defendant has property within this state which has been attached or has a debtor within this state, who has been garnished. Jurisdiction under this subsection may be independent of or supplementary to jurisdiction acquired under subsections (5)(a)(i), (5)(a)(ii), and (5)(a)(iii) herein.

**(b) Effect of service by publication.** When a defendant, whether known or unknown, has been served by publication as provided in this rule, any court of this state having jurisdiction may render a decree which will adjudicate any interest of such defendant in the status, property, or thing acted upon, but it may not bind the defendant personally to the personal jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

**(c) Filing of pleading and affidavit for service by publication; and order for publication.** Before service of the summons by publication is authorized in any case, there shall be filed with the clerk in the district court of the county in which the action is commenced (i) a pleading setting forth a claim in favor of the plaintiff and against the defendant in one of the situations defined in (5)(a) above; and (ii) in situations defined in (5)(a)(i), (5)(a)(ii), (5)(a)(iii), upon return of the summons showing the failure to find any defendant designated in the complaint, an affidavit stating that such defendant resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals defendant's person to avoid the service of summons; or, if the defendant is a domestic or foreign corporation, that none of the persons designated in D(2)(e) above can, after due diligence, be found within the state; or, if the defendant is an unknown claimant, by showing that the affiant has made diligent search and inquiry for all persons who claim, or might claim any right, title, estate, or interest in, or lien, or encumbrance upon, such property, or any thereof, adverse to

plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any right of dower, inchoate or accrued, and that the affiant has specifically named as defendants in such action all such persons whose names can be ascertained; such affidavit shall be sufficient evidence of the diligence of any inquiry made by the affiant, if the affidavit recite the fact that diligent inquiry was made, and it need not detail the facts constituting such inquiry, and if desired, it may be combined in one instrument with the affidavit required under 4D(2)(f), or 4D(6); and (iii) in the situation defined in (5)(a)(iv) above, there must be first presented to the court proof that a valid attachment or garnishment has been effected. Upon complying herewith, the plaintiff may obtain an order for the service of summons to be made upon the defendants by publication, which order may be issued by either the judge or the clerk of the court.

**(d) Number of publications.** Service of the summons by publication may be made by publishing the same three times, once each week for 3 successive weeks, in a newspaper published in the county in which the action is pending, if a newspaper is published in such county, and if no newspaper is published in such county then in a newspaper published in an adjoining county and having a general circulation therein.

**(e) Mailing summons and complaint.** A copy of the summons for publication and complaint, at any time after the filing of the affidavit for publication and not later than 10 days after the first publication of the summons, shall be deposited in some post office in this state, postage prepaid, and directed to the defendant at defendant's place of residence unless the affidavit for publication states that the residence of the defendant is unknown. If the defendant is a corporation, and personal service cannot with due diligence be effected within Montana on any of the persons designated in D(2)(e) above, then service may be completed on said corporation by service upon the secretary of state in the manner, and following the procedure outlined in D(2)(f) above.

**(f) Time when first publication or service outside state must be made.** The first publication of summons, or personal service of the summons and complaint upon the defendant out of the state, must be made within 60 days after the filing of the affidavit for publication. If not so made, the action shall be deemed dismissed as to any party intended to be served by such publication.

**(g) When service by publication or outside state complete.** Service by publication is complete on the date of the last publication of the summons, or in case of personal service of the summons and complaint upon the defendant out of the state, on the date of such service.

**(h) Additional information to be published.** In addition to the form of summons prescribed above in "C. Process, (2) Summons--form," the published summons shall state in general terms the nature of the action, and in all cases where publication of summons is made in an action in which the title to, or any interest in or lien upon real property is involved, or affected, or brought into question, the

publication shall also contain a description of the real property involved, affected or brought into question thereby, and a statement of the object of the action.

**(6) (a) Service on secretary of state.** Whenever service is to be made upon certain corporations as provided hereinabove in D(2)(f) and D(5)(e), the requirements of said D(2)(f) must be complied with. In all other cases, unless otherwise provided by statute, whenever the secretary of state of the state of Montana has been appointed, or is deemed by law to have been appointed, as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party, or the party's attorney, shall make an affidavit stating the facts showing that the secretary of state is such agent, and stating the residence and last known post-office address of the person to be served, and shall file such affidavit with the clerk of court in which such claim for relief is pending, accompanied by sufficient copies of the affidavit, summons and complaint for service upon the secretary of state, and there has also been deposited with the clerk of court in which such claim for relief is pending the sum of \$10 to be paid to the secretary of state as a fee for each address of said defendants for whom the secretary of state is to receive such service; then the clerk shall forward the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, and one copy of the summons attached to copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee, to the office of the secretary of state.

Such service on the secretary of state shall be sufficient personal service upon the person to be served, provided that notice of such service and a copy of the summons and complaint are forthwith sent by registered or certified mail by the secretary of state or a deputy to the party to be served at that party's last known address, marked "Deliver to Addressee Only" and "Return Receipt Requested," and provided further that such return receipt shall be received by the secretary of state purporting to have been signed by said addressee, or the secretary of state shall be advised by the postal authority that delivery of said registered or certified mail was refused by said addressee, except in those cases where compliance is excused under the provisions of D(2)(f) above. The date upon which the secretary of state receives said return receipt, or receives advice by the postal authority that delivery of said registered or certified mail was refused by the addressee, shall be deemed the date of service.

As an alternative to sending the summons and complaint by registered or certified mail, as herein provided, the secretary of state, or a deputy, may cause copy of the summons and complaint to be served by any qualified law enforcement officer, in accord with the procedure set out in D(1), (2) or (3) of this rule.

The secretary of state, or a deputy, shall make an original and two copies of an affidavit reciting: (1) the fact of service upon the secretary of state by the clerk of court, including the day, and hour of such service; (2) the fact of mailing a copy of the summons and complaint and notice to the defendant, including the day and

hour thereof, except in those cases where the secretary of state is relieved from doing so under the provisions of D(2)(f) in which cases the affidavit shall so recite; and (3) the fact of receipt of a return from the postal department including the date, and hour thereof, and attaching to the affidavit a copy of such return. The secretary of state, or a deputy, shall then transmit the original summons, and original affidavit along with copy of the notice to the defendant where such notice was required, to the clerk of court in which the claim for relief is pending, and it shall be filed in the claim for relief by said clerk of court; and the secretary of state shall also transmit to the attorney for the plaintiff copy of the affidavit of the secretary of state along with copy of the notice to the defendant where such notice was required. The secretary of state shall keep on file in the secretary of state's office a copy of the summons, a copy of the affidavit served on the secretary of state by the clerk of court, and a copy of the affidavit executed and issued by the secretary of state.

**(b) Continuance to allow defense.** In any of the cases provided for in Rule 4D(2)(f) above, or provided for hereinabove in 4D(6)(a), the court in which the claim for relief is pending may order such continuance as may be necessary to afford reasonable opportunity to defend the action.

**(7) Amendment.** At any time, in its discretion, and upon such notice and terms as it deems just, the court may allow any process or proof of service thereof to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

**(8) Proof of service.** Proof of the service of the summons and of the complaint or notice, if any, accompanying the same must be as follows:

- (a) If served by the sheriff or other officer, the sheriff's or other officer's certificate thereof;
- (b) If by any other person, that person's affidavit thereof;
- (c) In case of publication an affidavit of the publisher and an affidavit of the deposit of a copy of the summons and complaint in the post office as required by law, if the same shall have been deposited; or
- (d) The written admission of the defendant showing the date and place of service.
- (e) If service is made under Rule 4D(1)(b) above, return shall be made by the sender's filing with the court the acknowledgment received pursuant to such subdivision. Failure to make proof of service does not affect the validity of the service.

The certificate or affidavit of service mentioned in this subdivision must state the time, date, place, and manner of service.

**(9) Contents of affidavit of service.** Whenever a process, pleading, order of court, or other paper is served personally by a person other than the sheriff or person designated by law, the affidavit of service when made, shall state that the person so serving is of legal age, and the date and place of making the service. It also shall state that the person making such service knew the person served to be the person named in the papers served and the person intended to be served.

**(10) Procedure where only part of defendants are served.** If the summons is served on one or more, but not all, of the defendants, the plaintiff may proceed to trial and judgment against the defendant or defendants on whom the process is served, and may at any time thereafter have a summons against the defendant not served with the first process to cause that defendant to appear in said court to show cause why that defendant should not be made a party to such judgment. Upon such defendant being duly served with such process, the court shall hear and determine the matter in the same manner as if such defendant had been originally brought into court, and such defendant shall also be allowed the benefit of any payment or satisfaction which may have been made on the judgment before recovered. History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750, Nov. 28, 1966, eff. Jan. 1, 1967; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993; amd. Sup. Ct. Ord. June 24, 1999, eff. Aug. 15, 1999.

These rules cover the common types of service of process. Chapter 3 of title 25 of the Montana Code Annotated contains additional requirements and procedures for delivery of papers, service, and time and manner of the return of service.

Who delivers the papers to the process server? Can a process server refuse to deliver process?

**25-3-201. Delivery of papers to officer.** (1) It is the duty of the clerk of any district court, at the request of a party in any civil action pending in such court or his agent or attorney, to forward by mail any process, summons, or other papers required in the cause; and it is the duty of the sheriff, registered process server, or other officer to whom said papers may be directed to receive the same at the place where the same are directed. When process in one county is intended for service in another, it is the duty of the clerk to forward the same in like manner.

(2) If the papers are delivered for service away from the county seat, all necessary copies thereof must be furnished for service.

(3) If any sheriff, registered process server, or other officer refuses to receive any summons or other process at the point where directed to him or to serve the same, he is guilty of a misdemeanor and upon conviction thereof must be fined in

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any sum not exceeding \$100. History: (1), (3)En. Secs. 1, 2, p. 7, L. 1881; re-en. Sec. 76, 1st Div. Comp. Stat. 1887; en. Sec. 640, C. Civ. Proc. 1895; re-en. Sec. 6523, Rev. C. 1907; re-en. Sec. 9120, R.C.M. 1921; re-en. Sec. 9120, R.C.M. 1935; Sec. 93-3016, R.C.M. 1947; (2)En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; Sec. 25-226, R.C.M. 1947; R.C.M. 1947, 25-226(part), 93-3016(part); amd. Sec. 83, Ch. 575, L. 1981; amd. Sec. 10, Ch. 548, L. 1987.

**25-3-202. When officer's execution of process justified and required.** A sheriff, registered process server, or other ministerial officer is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued. History: En. Sec. 4395, Pol. C. 1895; re-en. Sec. 3024, Rev. C. 1907; re-en. Sec. 4788, R.C.M. 1921; Cal. Pol. C. Sec. 4187; re-en. Sec. 4788, R.C.M. 1935; R.C.M. 1947, 16-2716; amd. Sec. 11, Ch. 548, L. 1987.

Who pays for the costs incurred in serving process?

**25-3-203. Prepayment of cost of service.** In no case shall the officer or registered process server receiving papers for service be required to serve the same unless the person in whose behalf the service is made or his agent or attorney first pay the cost of the service upon a demand therefor by the officer or registered process server.

Who serves process when the sheriff is a party to an action?

**25-3-205. Execution of process when sheriff a party.** When the sheriff is a party to an action or proceeding, the process and orders therein which it would otherwise be the duty of the sheriff to execute must be executed by the coroner of the county or a registered process server.

How is the Court informed that process has been served?

**25-3-301. Time and manner of return.** (1) It shall be the duty of the sheriff or other person serving a summons or other process or order required by any of the provisions of this code, issued out of any of the district courts of this state, to make due and legal return of such service and file the same with the clerk of the court in which such action or proceeding is pending not more than 10 days after the making of such service where the same was made in the county in which such action or proceeding is pending and not more than 15 days after the making of such service when the same was made outside of the county in which such action or proceeding is pending. Any failure to make and file such return as required may be punished as a contempt of court.

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(2) When process or a notice is returnable to another county or was forwarded under [25-3-201](#), the sheriff or a registered process server may enclose his return of such process or notice in an envelope addressed to the officer who sent it and deposit it in the post office, prepaying postage. History: (1)En. Sec. 1, Ch. 38, L. 1907; re-en. Sec. 6527, Rev. C. 1907; re-en. Sec. 9124, R.C.M. 1921; re-en. Sec. 9124, R.C.M. 1935; Sec. 93-3020, R.C.M. 1947; (2)En. Sec. 4385, Pol. C. 1895; re-en. Sec. 3014, Rev. C. 1907; re-en. Sec. 4778, R.C.M. 1921; Cal. Pol. C. Sec. 4177; re-en. Sec. 4778, R.C.M. 1935; Sec. 16-2706, R.C.M. 1947; R.C.M. 1947, 16-2706, 93-3020; amd. Sec. 84, Ch. 575, L. 1981; amd. Sec. 15, Ch. 548, L. 1987.

Section 25-3-301 requires a registered process server to make a return not more than 10 days after the date of service, if service is made within the county, and not more than 15 days if service is made outside the county in which such action or proceeding is pending. Failure to make a return is punishable as a contempt of court.

**25-3-302. Return prima facie evidence.** The return of the sheriff or registered process server upon process or notices is prima facie evidence of the facts in such return stated. History: En. Sec. 4386, Pol. C. 1895; re-en. Sec. 3015, Rev. C. 1907; re-en. Sec. 4779, R.C.M. 1921; Cal. Pol. C. Sec. 4178; re-en. Sec. 4779, R.C.M. 1935; R.C.M. 1947, 16-2707; amd. Sec. 16, Ch. 548, L. 1987.

**25-3-204. Officer to exhibit process.** The officer or registered process server executing such process must, then and at all times subsequent so long as he retains it, upon request, show the same with all papers attached to any person interested therein. History: En. Sec. 4396, Pol. C. 1895; re-en. Sec. 3025, Rev. C. 1907; re-en. Sec. 4789, R.C.M. 1921; Cal. Pol. C. Sec. 4188; re-en. Sec. 4789, R.C.M. 1935; R.C.M. 1947, 16-2717; amd. Sec. 13, Ch. 548, L. 1987.

### The Levying Officer

The job of levying officer is substantially more complex than that of the process server and has a great deal of liability exposure. See 70 American Jurisprudence 2d, Sheriffs, Police and Constables, §§ 61-180

The statutes governing writs of execution and levying are contained in Mont. Code Ann. Title 25, chapter 13.

### What is Levy?

A levy is the obtaining of control of property to satisfy a writ of execution.

What is a Writ of Execution?

**25-13-301. Form and contents of writ.** (1) The writ of execution must:

(a) be issued in the name of the state of Montana, sealed with the seal of the court, and subscribed by the clerk;

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- (b) be directed to the sheriff or levying officer;
  - (c) intelligibly refer to the judgment, stating the court and the county where it was entered and, if it is for money, the amount of money and the amount actually due on the judgment; and
  - (d) require the sheriff or levying officer to act substantially as provided in this part.
- (2) In executions, the amount of the execution must be computed and stated as near as may be possible in dollars and cents, rejecting fractions of a cent.
- (3) A writ of execution served upon an employer of the judgment debtor must be accompanied by a document that reasonably describes the exemptions from execution provided in [25-13-614](#). History: (1)En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; Sec. 93-5802, R.C.M. 1947; (2)En. Sec. 3152, Pol. C. 1895; re-en. Sec. 2035, Rev. C. 1907; re-en. Sec. 4285, R.C.M. 1921; Cal. Pol. C. Sec. 3274; re-en. Sec. 4285, R.C.M. 1935; Sec. 93-4710, R.C.M. 1947; R.C.M. 1947, 93-4710(part), 93-5802(part); amd. Sec. 105, Ch. 575, L. 1981; amd. Sec. 18, Ch. 548, L. 1987; amd. Sec. 4, Ch. 89, L. 1999.

Against whom may a Writ of Execution be executed?

**25-13-302. Execution against principal debtor before surety.** Upon the rendition of any judgment, if it shall be shown that one or more of the defendants against whom the judgment is to be rendered are principal debtors and others of the said defendants are sureties of such principal debtor, the court may order the judgment so to state, and upon the issuance of an execution upon such judgment, it shall direct the sheriff or levying officer to make the amount due thereon out of the goods and chattels, lands and tenements of the principal debtor or debtors or, if sufficient thereof cannot be found within his county to satisfy the same, to levy and make the same out of the property, personal or real, of the judgment debtor who was surety. History: En. Sec. 118, p. 67, Bannack Stat.; re-en. Sec. 145, p. 161, L. 1867; re-en. Sec. 181, p. 62, Cod. Stat. 1871; re-en. Sec. 231, p. 95, L. 1877; re-en. Sec. 231, 1st Div. Rev. Stat. 1879; re-en. Sec. 239, 1st Div. Comp. Stat. 1887; re-en. Sec. 1001, C. Civ. Proc. 1895; re-en. Sec. 6711, Rev. C. 1907; re-en. Sec. 9314, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 578; re-en. Sec. 9314, R.C.M. 1935; R.C.M. 1947, 93-4702(part); amd. Sec. 19, Ch. 548, L. 1987.

**25-13-303. Execution when only some of defendants served.** When a writ of execution is issued on a judgment recovered against two or more persons in an action upon a joint contract, in which action all the defendants were not served with summons or did not appear, it must direct the sheriff or levying officer to

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satisfy the judgment out of the joint property of all the defendants and the individual property only of the defendants who were served or who appeared in the action. History: En. Sec. 185, p. 80, Bannack Stat.; amd. Sec. 211, p. 177, L. 1867; re-en. Sec. 252, p. 81, Cod. Stat. 1871; re-en. Sec. 303, p. 119, L. 1877; re-en. Sec. 303, 1st Div. Rev. Stat. 1879; re-en. Sec. 314, 1st Div. Comp. Stat. 1887; re-en. Sec. 1212, C. Civ. Proc. 1895; re-en. Sec. 6815, Rev. C. 1907; re-en. Sec. 9418, R.C.M. 1921; re-en. Sec. 9418, R.C.M. 1935; R.C.M. 1947, 93-5803; amd. Sec. 20, Ch. 548, L. 1987.

**25-13-304. Execution against property of judgment debtor.** If the writ be against the property of the judgment debtor, it shall require the sheriff or levying officer to satisfy the judgment, with interest, out of the personal property of such debtor and, if sufficient personal property cannot be found, out of his real property as provided in [25-13-305](#). History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(part); amd. Sec. 106, Ch. 575, L. 1981; amd. Sec. 21, Ch. 548, L. 1987.

**25-13-305. Execution of lien on real property.** If the judgment be a lien upon real property, the writ shall require the sheriff or levying officer to satisfy the judgment, with interest, out of the real property belonging to the judgment debtor on the day when the judgment was docketed or at any time thereafter or, if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the clerk of the district court of such county, stating such day, or any time thereafter. History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(part); amd. Sec. 22, Ch. 548, L. 1987.

**25-13-306. Execution against property in hands of representative.** If the writ be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff or levying officer to satisfy the judgment, with interest, out of such property. History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(2); amd. Sec. 23, Ch. 548, L. 1987.

**25-13-307. Execution requiring delivery of possession of property.** If the writ be for the delivery of the possession of real or personal property, it must require

the sheriff or levying officer to deliver the possession of the same, particularly describing it, to the party entitled thereto and may at any time require the sheriff or levying officer to satisfy any costs, damages, rents, or profits recovered by the same judgment out of the personal property of the person against whom it was rendered, the value of the property for which the judgment was rendered to be specified therein, if a delivery cannot be had, and if sufficient personal property cannot be found, then out of the real property, as provided in [25-13-305](#). History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(4); amd. Sec. 24, Ch. 548, L. 1987.

**25-13-203. Judgments requiring the performance of specific acts.** (1) When the judgment requires the performance of any other act than those designated in [25-13-201](#) and [25-13-202](#), a certified copy of the judgment may be served upon the party against whom the same is rendered or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the court.

(2) Where a judgment directs a party to make a deposit or delivery or to convey real property, if the direction is disobeyed, the court, besides punishing the disobedience as a contempt, may by order require the sheriff or levying officer, who may be a registered process server, to take and deposit or deliver the money or other personal property or to convey the real property in conformity with the direction of the court. History: (1)En. Sec. 213, p. 177, L. 1867; re-en. Sec. 254, p. 81, Cod. Stat. 1871; en. Sec. 305, p. 120, L. 1877; re-en. Sec. 305, 1st Div. Rev. Stat. 1879; re-en. Sec. 316, 1st Div. Comp. Stat. 1887; re-en. Sec. 1214, C. Civ. Proc. 1895; re-en. Sec. 6817, Rev. C. 1907; re-en. Sec. 9420, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 684; re-en. Sec. 9420, R.C.M. 1935; Sec. 93-5805, R.C.M. 1947; (2)En. Sec. 229, P. 95, L. 1877; re-en. Sec. 229, 1st Div. Rev. Stat. 1879; re-en. Sec. 237, 1st Div. Comp. Stat. 1887; amd. Sec. 972, C. Civ. Proc. 1895; re-en. Sec. 6707, Rev. C. 1907; re-en. Sec. 9310, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 574; re-en. Sec. 9310, R.C.M. 1935; Sec. 93-4504, R.C.M. 1947; R.C.M. 1947, 93-4504(part), 93-5805(part); amd. Sec. 17, Ch. 548, L. 1987.

To whom is a Writ of Execution issued?

**25-13-401. To whom execution issued.** Where the execution is against the property of the judgment debtor, it may be issued to the sheriff or levying officer of any county in the state. Where it requires the delivery of real or personal property, it must be issued to the sheriff or levying officer of the county where the property or some part thereof is situated. Executions may be issued at the same time to different counties. History: En. Sec. 216, p. 178, L. 1867; re-en. Sec. 257, p. 82, Cod. Stat. 1871; re-en. Sec. 307, p. 120, L. 1877; re-en. Sec. 307, 1st Div. Rev. Stat. 1879; re-en. Sec. 318, 1st Div. Comp. Stat. 1887; re-en. Sec. 1217, C.

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Civ. Proc. 1895; re-en. Sec. 6820, Rev. C. 1907; re-en. Sec. 9423, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 687; re-en. Sec. 9423, R.C.M. 1935; R.C.M. 1947, 93-5809; amd. Sec. 25, Ch. 548, L. 1987.

How is a Writ of Execution executed?

**25-13-402. How writ executed.** (1) The sheriff or levying officer shall execute the writ against the property of the judgment debtor no later than 60 days after receipt of the writ by:

- (a) levying on a sufficient amount of property, if there is sufficient property;
- (b) collecting or selling the things in action; and
- (c) selling the other property and paying to the judgment creditor or the judgment creditor's attorney as much of the proceeds as will satisfy the judgment.

(2) Any proceeds in excess of the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When the sheriff or levying officer determines that there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, the sheriff or levying officer shall levy only on the part of the property that the judgment debtor may indicate if the property indicated is sufficient to satisfy the judgment and costs.

(3) With respect to earnings of a judgment debtor, an employer shall respond to the levy based upon the earnings accrued to the end of the regular pay period in which the levy occurred.

(4) Except for perishable property, the sheriff or levying officer shall hold any property or money levied upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment creditor.

(5) If the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to time and as often as necessary, within the 60 days until the judgment is satisfied or the writ expires. History: En. Sec. 198, p. 83, Bannack Stat.; re-en. Sec. 220, p. 180, L. 1867; re-en. Sec. 270, p. 85, Cod. Stat. 1871; amd. Sec. 320, p. 125, L. 1877; re-en. Sec. 320, 1st Div. Rev. Stat. 1879; re-en. Sec. 331, 1st Div. Comp. Stat. 1887; re-en. Sec. 1224, C. Civ. Proc. 1895; re-en. Sec. 6827, Rev. C. 1907; re-en. Sec. 9431, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 691; re-en. Sec. 9431, R.C.M. 1935; R.C.M. 1947, 93-5823; amd. Sec. 3, Ch. 88, L. 1987; amd. Sec. 26, Ch. 548, L. 1987; amd. Sec. 5, Ch. 89, L. 1999.

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Who pays for the costs incurred in an execution?

**25-13-403. Security for costs when property seized.** If the sheriff or levying officer will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of a writ of execution shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ. History: En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907; re-en. Sec. 4786, R.C.M. 1921; Cal. Pol. C. Sec. 4185; re-en. Sec. 4786, R.C.M. 1935; amd. Sec. 1, Ch. 426, L. 1977; R.C.M. 1947, 16-2714(part); amd. Sec. 27, Ch. 548, L. 1987.

How is the court informed an execution has occurred?

**25-13-404. Return of the execution.** (1) Except as provided in subsections (2) and (3), execution may be made returnable to the clerk of the court in which the judgment was rendered, at any time not less than 10 or more than 60 days after receipt of the recovery by the sheriff or levying officer following imposition of levy, as provided in [25-13-402](#).

(2) The writ of execution issued by the county treasurer under [15-16-401](#) may be made returnable, at any time not less than 10 or more than 90 days after its receipt by the sheriff or levying officer, to the county treasurer of the county in which the writ was issued.

(3) In compliance with the provisions of subsection (1) and in lieu of returning the writ of execution to the clerk of the court, the sheriff may enclose his return of the writ in an envelope to the officer, agent, or attorney who sent it and deposit it in the post office, prepaying the postage. History: En. Sec. 212, p. 177, L. 1867; re-en. Sec. 253, p. 81, Cod. Stat. 1871; amd. Sec. 20, p. 57, L. 1874; re-en. Sec. 304, p. 119, L. 1877; re-en. Sec. 304, 1st Div. Rev. Stat. 1879; re-en. Sec. 315, 1st Div. Comp. Stat. 1887; re-en. Sec. 1213, C. Civ. Proc. 1895; re-en. Sec. 6816, Rev. C. 1907; re-en. Sec. 9419, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 683; re-en. Sec. 9419, R.C.M. 1935; R.C.M. 1947, 93-5804(part); amd. Sec. 107, Ch. 575, L. 1981; amd. Sec. 1, Ch. 91, L. 1983; amd. Sec. 4, Ch. 88, L. 1987; amd. Sec. 28, Ch. 548, L. 1987.

What property is subject to execution?

**25-13-501. What property subject to execution.** All goods, chattels, moneys, and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action are liable to execution. Shares and interest in any corporation or company, debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery may be attached on execution, in like manner as upon writs of attachment. Gold dust must be returned by the officer as so much money collected, at its current value, without

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exposing the same to sale. Until a levy, property is not affected by the execution. History: En. Sec. 192, p. 81, Bannack Stat.; amd. Sec. 217, p. 178, L. 1867; re-en. Sec. 258, p. 82, Cod. Stat. 1871; re-en. Sec. 308, p. 121, L. 1877; re-en. Sec. 308, 1st Div. Rev. Stat. 1879; re-en. Sec. 319, 1st Div. Comp. Stat. 1887; re-en. Sec. 1218, C. Civ. Proc. 1895; re-en. Sec. 6821, Rev. C. 1907; re-en. Sec. 9424, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 688; re-en. Sec. 9424, R.C.M. 1935; R.C.M. 1947, 93-5810.

What occurs if personal property levied upon is claimed by a third party?

**25-13-503. Property claimed by third persons.** If personal property levied upon be claimed by a third person, the same proceedings shall be had as provided in attachment in [27-18-602](#). History: En. Sec. 1220, C. Civ. Proc. 1895; re-en. Sec. 6823, Rev. C. 1907; re-en. Sec. 9426, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 689; re-en. Sec. 9426, R.C.M. 1935; R.C.M. 1947, 93-5812.

**27-18-602. Claim of attached property by third person -- plaintiff to indemnify sheriff.** If personal property attached be claimed by a third person, he shall give notice thereof to the sheriff and deliver to him an affidavit, stating his claim, ownership, and a description of the property; and unless the plaintiff, within 10 days after receiving notice thereof, give the sheriff a good and sufficient bond to indemnify him against loss or damage by reason of such retaining said property, the sheriff shall deliver the same to such person. History: En. Sec. 149, p. 57, Cod. Stat. 1871; re-en. Sec. 191, p. 87, L. 1877; re-en. Sec. 191, 1st Div. Rev. Stat. 1879; re-en. Sec. 193, 1st Div. Comp. Stat. 1887; en. Sec. 906, C. Civ. Proc. 1895; re-en. Sec. 6673, Rev. C. 1907; re-en. Sec. 9273, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 549; re-en. Sec. 9273, R.C.M. 1935; R.C.M. 1947, 93-4320.

What occurs if personal property levied upon is subject to a security interest?

**25-13-505. Personal property subject to a security interest.** Personal property subject to a security interest may be taken on execution issued at the suit of a creditor of the debtor under the security agreement; but before the property is so taken, the officer levying the writ must pay or tender to the secured party the amount of the security agreement debt and interest or must deposit the same with the county treasurer of the county in which the financing statement covering the security agreement is filed, if such statement is filed with a county clerk and recorder, or if such statement is filed with another filing officer pursuant to law, then with such other filing officer, payable to the order of the secured party. History: En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part).

What property is exempt from execution?

**25-13-608. Property exempt without limitation -- exceptions.** (1) A judgment debtor is entitled to exemption from execution of the following:

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- (a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;
- (b) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation, except as provided in subsection (2);
- (c) veterans' benefits, except as provided in subsection (2);
- (d) disability or illness benefits, except as provided in subsection (2);
- (e) except as provided in subsection (2), individual retirement accounts, as defined in 26 U.S.C. 408(a), to the extent of deductible contributions made before the suit resulting in judgment was filed and the earnings on those contributions, and Roth individual retirement accounts, as defined in 26 U.S.C. 408A, to the extent of qualified contributions made before the suit resulting in judgment was filed and the earnings on those contributions;
- (f) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;
- (g) maintenance and child support; and
- (h) a burial plot for the judgment debtor and the debtor's family.

(2) Veterans' and social security legislation benefits based upon remuneration for employment, as defined in 42 U.S.C. 662(f), disability benefits, and assets of individual retirement accounts are not exempt from execution if the debt for which execution is levied is for:

- (a) child support; or
- (b) maintenance to be paid to a spouse or former spouse if the spouse or former spouse is the custodial parent of a child for whom child support is owed or owing and the judgment debtor is the parent of the child. History: En. Sec. 3, Ch. 302, L. 1987; amd. Sec. 1, Ch. 240, L. 1989; amd. Sec. 21, Ch. 552, L. 1997; amd. Sec. 1, Ch. 262, L. 1999.

**25-13-609. Personal property exempt subject to value limitations.** A judgment debtor is entitled to exemption from execution of the following:

- (1) the judgment debtor's interest, not to exceed \$4,500 in aggregate value, to the extent of a value not exceeding \$600 in any item of property, in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops, and musical instruments;
- (2) the judgment debtor's interest, not to exceed \$2,500 in value, in one motor vehicle;

(3) the judgment debtor's interest, not to exceed \$3,000 in aggregate value, in any implements, professional books, and tools, of the trade of the judgment debtor or a dependent of the judgment debtor; and

(4) the judgment debtor's interest, not to exceed \$4,000 in value, in any unmatured life insurance contracts owned by the judgment debtor. History: En. Sec. 4, Ch. 302, L. 1987; amd. Sec. 1, Ch. 130, L. 1989; amd. Sec. 1, Ch. 237, L. 1999.

**25-13-613. Property necessary to carry out governmental functions.** (1) In addition to the property mentioned in [25-13-609](#)(1), there shall be exempt to all judgment debtors the following property:

(a) all fire engines, hooks, and ladders, with the cart, trucks, and carriages, hose, buckets, implements, and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department organized under any laws of this state;

(b) all arms, uniforms, and accouterments required by law to be kept by any person and one gun to be selected by the debtor;

(c) all courthouses, jails, public offices, and buildings, lots, grounds, and personal property, the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the courthouse, jail, and public offices belonging to any county of this state; and

(d) all cemeteries, public squares, parks, and places, public buildings, town halls, public markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining owned or held by any town or incorporated city or dedicated by such city or town to health, ornament, or public use or for the use of any fire or military company organized under the laws of the state.

(2) No article, however, or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage lien thereon, and no person not a bona fide resident of this state shall have the benefit of these exemptions. History: En. Sec. 1222, C. Civ. Proc. 1895; amd. Sec. 2, Ch. 8, L. 1905; re-en. Sec. 6825, Rev. C. 1907; re-en. Sec. 9428, R.C.M. 1921; re-en. Sec. 9428, R.C.M. 1935; R.C.M. 1947, 93-5814(part); amd. Sec. 3, Ch. 210, L. 1985; amd. Sec. 37, Ch. 83, L. 1989.

**25-13-614. Earnings of judgment debtor.** (1) Earnings of a judgment debtor that are not subject to garnishment as provided in this section are exempt.

(2) Except as provided in subsections (3) and (4), the maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subjected to garnishment may not exceed the lesser of:

(a) the amount by which his disposable earnings for the week exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable; or

(b) 25% of his disposable earnings for that week.

(3) The restrictions of subsection (2) do not apply in the case of an order or judgment for the maintenance or support of any person, issued by a court of competent jurisdiction or pursuant to an administrative procedure that is established by state law, affords substantial due process, and is subject to judicial review.

(4) (a) The maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subject to garnishment to enforce an order described in subsection (3) may not exceed:

(i) 50% of the judgment debtor's disposable earnings for that week if he is supporting his spouse or dependent child (other than a spouse or child for whom the order is issued); or

(ii) 60% of the judgment debtor's disposable earnings for that week if he is not supporting a spouse or dependent child described in subsection (4)(a)(i). (b) However, the amount stated in subsection (4)(a)(i) may be 55% and the amount stated in subsection (4)(a)(ii) may be 65% if such earnings are being garnished to enforce an order for maintenance or support for a period prior to the 12-week period that ends with the beginning of such workweek.

(5) For the purposes of this section, the definitions of earnings, disposable earnings, and garnishment are as set forth in 15 U.S.C. 1672. History: En. Sec. 1222, C. Civ. Proc. 1895; re-en. Sec. 6825, Rev. C. 1907; amd. Sec. 1, Ch. 48, L. 1913; re-en. Sec. 9429, R.C.M. 1921; amd. Sec. 1, Ch. 3, L. 1933; re-en. Sec. 9429, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1939; R.C.M. 1947, 93-5816; amd. Sec. 7, Ch. 370, L. 1981; amd. Sec. 1, Ch. 153, L. 1983; amd. Sec. 1, Ch. 538, L. 1985; amd. Sec. 7, Ch. 302, L. 1987; amd. Sec. 2, Ch. 301, L. 1989.

**25-13-615. Homestead.** The homestead of a judgment debtor exempt from execution is provided for in Title 70, chapter 32. History: En. Sec. 1223, C. Civ. Proc. 1895; re-en. Sec. 6826, Rev. C. 1907; re-en. Sec. 9430, R.C.M. 1921; re-en. Sec. 9430, R.C.M. 1935; R.C.M. 1947, 93-5818.

Is property traceable to exempt property exempt?

**25-13-610. Tracing exempt personal property.** (1) If money or other property exempt under [25-13-608](#) and [25-13-609](#) has been sold or has been lost,

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damaged, or destroyed and the judgment debtor has been indemnified for it, he is entitled for 6 months to an exemption of proceeds that are traceable (for example, in a bank or savings account).

(2) Earnings exempt under [25-13-614](#) remain exempt for 45 days after receipt by and while in the possession of the judgment debtor in a form into which the exempt earnings are traceable (for example, in a bank or savings account).

(3) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor. History: En. Sec. 5, Ch. 302, L. 1987.

How is property sold after it has been levied upon?

The statutes on this issue are unclear. Mont. Code Ann. title 25, chapter 13, part 7, which deals with the Sale of Execution, was not amended in 1987. Part 7 provides the method of conducting a Sheriff's Sale and penalties for failure to follow that method. It appears the legislature has failed to provide a method to sell levied property.

(1) It is suggested that each registered process server contact private legal counsel for advice on the proper method for selling levied property.

(2) Two suggested methods for selling levied property are:

(a) the court order authorizing the execution of judgement should also contain specific instructions concerning the sale of the levied property and disposition of proceeds; or

(b) the court order authorizing the execution of judgment should also contain an order directing the sheriff to conduct a sheriff's sale for the property levied pursuant to the writ of execution.

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## **NEBRASKA PROCESS SERVER REQUIREMENTS**

Nebraska state law provides for service of process of the summons by mail, by the sheriff in the county where service is made, by a person authorized by law, or by a person specially appointed by the court for that purpose. Neb. Rev. Stat. Ann. § 25-506.01.

In counties having a population of 100,000 or greater, the judge of the county court can contract with a constable to serve civil process. Neb. Rev. Stat. Ann. § 25-2229. For counties without constables, any person twenty-one years and older can serve process so long as they are not a party, not related to a party to the action, do not have an interest in the action, is not a public official employed by the county where service is made whose duties include service of process, and furnishes a good and sufficient corporate surety bond in the sum of \$15,000. Neb. Rev. Stat. Ann. § 25-507.

### **Applicable Appended Provisions:**

- Nebraska Revised Statutes Annotated § 25-542 – service of process; applicability
- Nebraska Revised Statutes Annotated § 25-506.01 – process; by whom served
- Nebraska Revised Statutes Annotated § 25-507 – process server; requirements; bond; cost
- Nebraska Revised Statutes Annotated § 25-2229 – constables; contracts authorized
- Nebraska Revised Statutes Annotated § 25-2233 – sheriff; service of process
- Nebraska Revised Statutes Annotated § 33-117 – sheriffs; fees; disposition; mileage; report to county board

**Nebraska Revised Statutes Annotated § 25-542 – service of process; applicability**

R.R.S. Neb. § 25-542 (2009)

§ 25-542. Service of process; applicability

Unless specifically provided to the contrary or the context otherwise requires, the provisions of Chapter 25, article 5, on service of process, as such provisions may from time to time be amended, shall apply to all civil proceedings in all courts of this state and to all proceedings under any statute which refers to or incorporates the general provisions on process or service of process.

**Nebraska Revised Statutes Annotated § 25-506.01 – process; by whom served**

R.R.S. Neb. § 25-506.01 (2009)

§ 25-506.01. Process; by whom served

(1) Unless the plaintiff has elected service by certified mail, the summons shall be served by the sheriff of the county where service is made, by a person authorized by [section 25-507](#) or otherwise authorized by law, or by a person, corporation, partnership, or limited liability company not a party to the action specially appointed by the court for that purpose.

(2) Service by certified mail shall be made by plaintiff or plaintiff's attorney.

**Nebraska Revised Statutes Annotated § 25-507 – process server; requirements;  
bond; cost**

R.R.S. Neb. § 25-507 (2009)

§ 25-507. Process server; requirements; bond; cost

(1) In any county which does not have a person contracted as a constable pursuant to [section 25-2229](#), any person twenty-one years of age or older or a corporation, partnership, or limited liability company that satisfies the requirements of subsection (2) of this section shall have the same power as a sheriff to execute any service of process or order.

(2) Any person or entity may exercise the powers provided in subsection (1) of this section if such person or entity (a) is not a party to the action, (b) is not related to a party to the action, (c) does not have an interest in the action, (d) is not a public official employed by the county where service is made whose duties include service of process, and (e) furnishes a good and sufficient corporate surety bond in the sum of fifteen thousand dollars, such bond being conditioned upon such person or entity faithfully and truly performing the duties of process server.

(3) Evidence of the corporate surety bond shall be provided to the clerk of each court in which such person or entity executes service of process or orders. Such person or entity is not required to furnish more than one bond to execute service of process or orders in any state court in the State of Nebraska. When service of process is made by such person or entity authorized by this section, proof of such service of process shall be shown by an affidavit.

(4) The cost of service of process is taxable as a court cost, and when service of process is made by such person or entity other than a sheriff the cost taxable as a court cost is the lesser of the actual amount incurred for service of process or orders or the statutory fee set for sheriffs in [section 33-117](#).



**Nebraska Revised Statutes Annotated § 25-2229 – constables; contracts authorized**

R.R.S. Neb. § 25-2229 (2009)

§ 25-2229. Constables; contracts authorized

(1) In counties having a population of one hundred thousand or more inhabitants, each judge of the county court may contract with one constable for purposes of serving or otherwise executing, according to law, and returning writs or other legal process. Such constables shall not be considered employees of the state or its political subdivisions. Notwithstanding any other provision of law, the terms of such contract shall be prescribed by the State Court Administrator.

(2) In counties having more than one contracted constable, the party requesting the constable to serve or otherwise execute any legal process may designate by name the constable who shall serve or otherwise execute such legal process.

**Nebraska Revised Statutes Annotated § 25-2233 – sheriff; service of process**

R.R.S. Neb. § 25-2233 (2009)

§ 25-2233. Sheriff; service of process

It shall be the duty of every sheriff to serve and execute all warrants, writs, precepts, executions, and other legal process to him or her directed and delivered.

**Nebraska Revised Statutes Annotated § 33-117 – sheriffs; fees; disposition; mileage; report  
to county board**

R.R.S. Neb. § 33-117 (2009)

§ 33-117. Sheriffs; fees; disposition; mileage; report to county board

(1) The several sheriffs shall charge and collect fees at the rates specified in this section. The rates shall be as follows: (a) Serving a capias with commitment or bail bond and return, two dollars; (b) serving a search warrant, two dollars; (c) arresting under a search warrant, two dollars for each person so arrested; (d) unless otherwise specifically listed in subdivisions (f) to (s) of this subsection, serving a summons, subpoena, order of attachment, order of replevin, other order of the court, notice of motion, other notice, other writ or document, or any combination thereof, including any accompanying or attached documents, ten dollars for each person served, except that when more than one person is served at the same time and location in the same case, the service fee shall be ten dollars for the first person served at that time and location and two dollars and fifty cents for each other person served at that time and location; (e) making a return of each summons, subpoena, order of attachment, order of replevin, other order of the court, notice of motion, other notice, or other writ or document, whether served or not, five dollars; (f) taking and filing a replevin bond or other indemnification to be furnished and approved by the sheriff, one dollar; (g) making a copy of any process, bond, or other paper not otherwise provided for in this section, twenty-five cents per page; (h) traveling each mile actually and necessarily traveled within or without their several counties in their official duties, three cents more per mile than the rate provided in [section 81-1176](#), except that the minimum fee shall be fifty cents when the service is made within one mile of the courthouse, and, as far as is expedient, all papers in the hands of the sheriff at any one time shall be served in one or more trips by the most direct route or routes and only one mileage fee shall be charged for a single trip, the total mileage cost to be computed as a unit for each trip and the combined mileage cost of each trip to be prorated among the persons or parties liable for the payment of same; (i) levying a writ or a court order and return thereof, fifteen dollars; (j) summoning a grand jury, not including mileage to be paid by the county, ten dollars; (k) summoning a petit jury, not including mileage to be paid by the county, twelve dollars; (l) summoning a special jury, for each person impaneled, fifty cents; (m) calling a jury for a trial of a case or cause, fifty cents; (n) executing a writ of restitution or a writ of assistance and return, fifteen dollars; (o) calling an inquest to appraise lands and tenements levied on by execution, one dollar; (p) calling an inquest to appraise goods and chattels taken by an order of attachment or replevin, one dollar; (q) advertising a sale in a newspaper in addition to the price of printing, one dollar; (r) advertising in writing for a sale of real or personal property, five dollars; and (s) making deeds for land sold on execution or order of sale, five dollars.

(2) (a) Except as provided in subdivision (b) of this subsection, the commission due a sheriff on an execution or order of sale, an order of attachment decree, or a sale of real or personal property shall be: For each dollar not exceeding four hundred dollars, six cents; for every dollar above four hundred dollars and not exceeding one thousand dollars, four cents; and for every dollar above one thousand dollars, two cents.

(b) In real estate foreclosure, when any party to the original action purchases the property or

when no money is received or disbursed by the sheriff, the commission shall be computed pursuant to subdivision (a) of this subsection but shall not exceed two hundred dollars.

(3) The sheriff shall, on the first Tuesday in January, April, July, and October of each year, make a report to the county board showing (a) the different items of fees, except mileage, collected or earned, from whom, at what time, and for what service, (b) the total amount of the fees collected or earned by the officer since the last report, and (c) the amount collected or earned for the current year. He or she shall pay all fees earned to the county treasurer who shall credit the fees to the general fund of the county.

(4) Any future adjustment made to the reimbursement rate provided in subsection (1) of this section shall be deemed to apply to all provisions of law which refer to this section for the computation of mileage.

(5) Commencing on and after January 1, 1988, all fees earned pursuant to this section, except fees for mileage, by any constable who is a salaried employee of the State of Nebraska shall be remitted to the clerk of the county court. The clerk of the county court shall pay the same to the General Fund.

## **NEVADA PROCESS SERVER REQUIREMENTS**

In Nevada, process servers must be licensed. Under Nevada Revised Statutes Annotated § 648.060 (2007), no person may engage in the business of process serving without a license. In order to qualify for a license, applicants must be over 21, be eligible to work in the United States, be of good moral character, with no felony convictions and must have two years (4,000 hours) of experience. Nev. Rev. Stat. Ann. § 648.110(1). Applicants must also file an application, which includes a detailed statement of their personal history, a statement of his financial condition, and other facts that may be required to show good character, competency, and integrity. § 648.080.

The Nevada State Private Investigators Licensing Board administers the licensure requirement. § 648.30. The Board is responsible for conducting background investigations, administering compliance audits and investigating various complaints against licensees. §§ 648.100(2), 648.160. It also administers the one-hour written examination of 50 questions that applicants must pass with a score of 75% or better. § 648.100(1). The Board, when satisfied from recommendations and investigation that the applicant is of good character, competency and integrity, may issue a license to the applicant which entitles him to serve process for one year. § 648.110(3).

### **Appended Applicable Provisions:**

- Nevada Revised Statute Annotated § 648.014 - process server defined
- Nevada Revised Statute Annotated § 648.060 - License or work card required; employment of other persons by licensee
- Nevada Revised Statute Annotated § 648.070- Application for license; fee; reexamination.
- Nevada Revised Statute Annotated § 648.080 - Contents of application.
- Nevada Revised Statute Annotated § 648.100 - Examinations; investigation of applicants; grounds for refusing to grant license



## **NEVADA STATUTES**

### **Nev. Rev. Stat. Ann. § 648.014**

#### **648.014. "Process server" defined.**

"Process server" means a person, other than a peace officer of the State of Nevada, who engages in the business of serving legal process within this state.

**Nev. Rev. Stat. Ann. § 648.060**

**648.060. License or work card required; employment of other persons by licensee.**

**1.** Except as otherwise provided in [NRS 253.220](#), no person may:

- (a)** Engage in the business of private investigator, private patrolman, process server, repossessor, dog handler, security consultant, or polygraphic examiner or intern; or
- (b)** Advertise his business as such, irrespective of the name or title actually used, unless he is licensed pursuant to this chapter.

**3.** A person licensed pursuant to this chapter may employ only another licensee, or a nonlicensed person who:

- (a)** Is at least 18 years of age.
- (b)** Is a citizen of the United States or lawfully entitled to remain and work in the United States.
- (c)** Is of good moral character and temperate habits.
- (d)** Has not been convicted of a felony or a crime involving moral turpitude or the illegal use or possession of a dangerous weapon.

**Nev. Rev. Stat. Ann. § 648.030 (2009)**

**648.030. Duties and powers.**

- 1.** The board shall from time to time adopt regulations to enable it to carry out the provisions of this chapter.
- 2.** The board shall classify licensees according to the type of business in which they are engaged and may limit the field and scope of the operations of a licensee to those in which he is classified.
- 3.** The board shall establish the criteria for:
  - (a)** Authorizing self-insurance maintained by licensees pursuant to [NRS 648.135](#).
  - (b)** Levying fines contained in notices of violation based upon the following factors:
    - (1)** The seriousness of the violation.
    - (2)** The good faith of the person being charged.
    - (3)** A person's history of previous violations.
- 4.** The board may by regulation fix qualifications of licensees and of the directors and officers of corporate licensees necessary to promote the public welfare.
- 5.** The board may by regulation require licensees and their employees to attend courses in firearm safety conducted by instructors approved by the board. The board may require a licensee or his employee to complete a certain amount of training in firearm safety before he may be permitted to carry a firearm in the course of his duties.

**Nev. Rev. Stat. Ann. § 648.070**

**648.070. Application for license; fee; reexamination.**

1. If the applicant is a natural person the application must be signed and verified by him.
2. If the applicant is a firm or partnership the application must be signed and verified by each natural person composing or intending to compose the firm or partnership.
3. If the applicant is a corporation:
  - (a) The application must be signed and verified by the president, the secretary and the treasurer thereof, and must specify:
    - (1) The name of the corporation.
    - (2) The date and place of its incorporation.
    - (3) The amount of the corporation's outstanding paid-up capital stock.
    - (4) Whether this stock was paid for in cash or property, and if in property, the nature and description of the property.
    - (5) The name of the person or persons affiliated with the corporation who possess the qualifications required for a license under this chapter.
  - (b) The application must be accompanied by a certified copy of the corporation's certificate of incorporation together with a certification from the secretary of state that the corporation is in good standing and, if the corporation is a foreign corporation, a certification from the secretary of state that the corporation is qualified to do business in this state.
  - (c) The successor to every such officer or a director shall, before entering upon the discharge of his duties, sign and verify a like statement, approved in like manner as this chapter prescribes for an individual signatory to an application and shall transmit the statement to the board.
  - (d) In the event of the death, resignation or removal of such an officer or a director, notice of that fact must be given in writing to the board within 10 days after the death, resignation or removal. The board shall conduct such an investigation of the successor pursuant to [NRS 648.100](#) as it deems necessary to verify the successor's qualifications.
4. If the applicant fails to pass the examination required by [NRS 648.100](#) he must not be reexamined until he has paid another fee of \$100 to cover the cost of reexamination.
5. If the applicant is applying for a license as a dog handler, the application must be accompanied by an additional fee of \$100 to cover the costs of an examination in the field. If the applicant fails to pass the examination or cancels the examination within 48 hours before the time scheduled for it, he may not be reexamined in the field until he has paid an additional fee of \$100.

The forms for applications, including the instructions, may be obtained from the office of the board. The board shall, by regulation, charge a fee to cover the cost of the preparation of the forms and instructions.

**Nev. Rev. Stat. Ann. § 648.080 (2009)**

Every application for a license must contain:

1. A detailed statement of the applicant's personal history on the form specified by the Board. If the applicant is a corporation, the application must include such a statement concerning each officer and director.
2. A statement of the applicant's financial condition on the form specified by the Board. If the applicant is a corporation, the application must include such a statement concerning each officer and director.
3. A specific description of the location of the principal place of business of the applicant, the business in which he intends to engage and the category of license he desires.
4. A complete set of fingerprints which the Board may forward to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.
5. A recent photograph of the applicant or, if the applicant is a corporation, of each officer and director.
6. Evidence supporting the qualifications of the applicant in meeting the requirements for the license for which he is applying.
7. If the applicant is not a natural person, the full name and residence address of each of its partners, officers, directors and manager, and a certificate of filing of a fictitious name.
8. Such other facts as may be required by the Board to show the good character, competency and integrity of each signatory.

**Nev. Rev. Stat. Ann. § 648.100**

**648.100. Examinations; investigation of applicants; grounds for refusing to grant license.**

**1.** The board shall require an applicant to pass a written examination for an initial license and may require an applicant to pass an oral examination. Examinations must be given at least four times a year.

**2.** The board shall conduct such investigation of an applicant, including the directors and officers of a corporate applicant, as it considers necessary. An applicant shall deposit with the board at the time of making an initial application for any license a fee of \$750 for the first category of license and \$250 for each additional category of license for which application is made, which must be applied to the cost of conducting the investigation. An individual applicant who is a resident of Nevada is liable for the entire cost of the investigation up to a maximum cost of \$1,500 for the first category of license and \$500 for each additional category of license for which application is made. A corporate applicant or an individual applicant who is not a resident of Nevada is liable for the entire cost of the investigation. Each applicant must pay the entire fee for which he is liable before taking an examination.

**3.** The board may refuse to grant a license if it determines that the applicant has:

**(a)** Committed any act which if committed by a licensee would be a ground for the suspension or revocation of a license under this chapter.

**(b)** Committed any act constituting dishonesty or fraud.

**(c)** Demonstrated untruthfulness or a lack of integrity.

**(d)** Been refused a license under this chapter or had a license revoked.

**(e)** Been an officer, director, partner or manager of any firm, partnership, association or corporation which has been refused a license under this chapter or whose license has been revoked.

**(f)** While unlicensed, performed any act for which a license is required by this chapter.

**(g)** Knowingly made any false statement in his application.

**(h)** Refused to provide any information required by the board.

**4.** The board shall provide the applicant with a copy of the report of the investigation within a reasonable time after it receives the completed report.

**Nev. Rev. Stat. Ann. § 648.110**

**648.110. Qualifications of applicants; issuance of license.**

**1.** Before the Board grants any license, the applicant, including each director and officer of a corporate applicant, must:

(a) Be at least 21 years of age.

(b) Be a citizen of the United States or lawfully entitled to remain and work in the United States.

(c) Be of good moral character and temperate habits.

(d) Have no conviction of:

(1) A felony relating to the practice for which the applicant wishes to be licensed; or

(2) Any crime involving moral turpitude or the illegal use or possession of a dangerous weapon.

**2.** Each applicant, or the qualifying agent of a corporate applicant, must:

**(d) If an applicant for a process server's license, have at least 2 years' experience as a process server, or the equivalent thereof, as determined by the Board.**

(e) If an applicant for a dog handler's license, demonstrate to the satisfaction of the Board his ability to handle, supply and train watchdogs.

(f) If an applicant for a license as an intern, have:

(1) Received:

(I) A baccalaureate degree from an accredited college or university and have at least 1 year's experience in investigation or polygraphic examination satisfactory to the Board;

(II) An associate degree from an accredited college or university and have at least 3 years' experience; or

(III) A high school diploma or its equivalent and have at least 5 years' experience; and

(2) Satisfactorily completed a basic course of instruction in polygraphic techniques satisfactory to the Board.

**3.** The Board, when satisfied from recommendations and investigation that the applicant is of good character, competency and integrity, may issue and deliver a license to the applicant entitling him to conduct the business for which he is licensed, for the period which ends on July 1 next following the date of issuance.

**4.** For the purposes of this section, 1 year of experience consists of 2,000 hours of experience.



**648.135. Licensee to maintain insurance or act as self-insurer; minimum limits of liability; proof.**

**1.** Before issuing any license or annual renewal thereof, the board shall require satisfactory proof that the applicant or licensee:

**(a)** Is covered by a policy of insurance for protection against liability to third persons, with limits of liability in amounts not less than \$200,000, written by an insurance company authorized to do business in this state; or

**(b)** Possesses and will continue to possess sufficient means to act as a self-insurer against that liability.

**2.** Every licensee shall maintain the policy of insurance or self-insurance required by this section. The license of every such licensee is automatically suspended 10 days after receipt by the licensee of notice from the board that the required insurance is not in effect, unless satisfactory proof of insurance is provided to the board within that period.

**3.** Proof of insurance or self-insurance must be in such a form as the board may require.

## NEW HAMPSHIRE PROCESS SERVER REQUIREMENTS

New Hampshire state law provides as follows:

All writs and other processes shall at the time that they are served upon the defendant indicate on such writ or process the time, place and mode of service made upon the defendant, and shall further indicate any attachments made upon the property of the defendant and the time, place and method of such attachments. *Such information shall be placed upon the writ by the sheriff, deputy sheriff, or other person authorized by law who has made such service.*

N.H. Rev. Stat. Ann. § 510:2-a (Contents of Writs and Processes) (emphasis added). In addition, other provisions state that sheriffs, deputy sheriffs, and constables can serve process. §§ 104:5, 104:9.

We did not find any provision that related to private process servers or to education or other requirements for private process servers.

### **Appended Applicable Provisions:**

- N.H. Rev. Stat. Ann. § 104:4 – Special Deputy
- N.H. Rev. Stat. Ann. § 104:5 – Duties (sheriff)
- N.H. Rev. Stat. Ann. § 104:9 – Constables
- N.H. Rev. Stat. Ann. § 510:2-a – Contents of Writs and Processes

NEW HAMPSHIRE REVISED STATUTES ANNOTATED

TITLE VII Sheriffs, Constables, And Police Officers  
CHAPTER 104 Sheriffs and Constables

RSA 104:4 (2009)

**104:4 Special Deputy.**

A sheriff may appoint a special deputy for the service and return of any process, by warrant indorsed thereon, in the manner heretofore practiced.

NEW HAMPSHIRE REVISED STATUTES ANNOTATED

TITLE VII Sheriffs, Constables, And Police Officers

CHAPTER 104 Sheriffs and Constables

RSA 104:5 (2009)

**104:5 Duties.**

- I.** The sheriff and the sheriff's deputies shall serve and execute all writs and other precepts directed to the sheriff's department and issued from lawful authority.
- II.** The sheriff and the sheriff's deputies and bailiffs shall perform the duties of crier of the court.
- III.** The sheriff's bailiffs shall provide adequate security in all state courts, except the supreme court.
- IV.** The sheriff's bailiffs shall comply with such background investigation checks, physical and mental standards, and training appropriate to their duties as the police standards and training council may require. The council shall consult with the New Hampshire Sheriffs Association and the administrative office of the courts prior to adopting these standards.

NEW HAMPSHIRE REVISED STATUTES ANNOTATED

RSA 104:9 (2009)

**104:9 Constables.**

Constables shall serve and return writs and other civil precepts to them directed wherein the amount demanded in damages does not exceed \$75, and no others, and shall have similar powers and be subject to similar liabilities in relation thereto as sheriffs.

RSA 510:2-a (2009)

**510:2-a Contents of Writs and Processes.**

All writs and other processes shall at the time that they are served upon the defendant indicate on such writ or process the time, place and mode of service made upon the defendant, and shall further indicate any attachments made upon the property of the defendant and the time, place and method of such attachments. Such information shall be placed upon the writ by the sheriff, deputy sheriff, or other person authorized by law who has made such service.

## NEW JERSEY PROCESS SERVER REQUIREMENTS

New Jersey does not have education requirements for process servers. Under New Jersey law: Summons shall be served, together with a copy of the complaint, by the sheriff, or by a person specially appointed by the court for that purpose, or by plaintiff's attorney or the attorney's agent, *or by any other competent adult not having a direct interest in the litigation.*

N.J. Court R. 4:4-3 (emphasis added). A prevailing party can recover the costs of payment to a private process server, N.J. Court. R. 4:42-8(c), but such costs cannot exceed the amount recoverable as fees by sheriffs. Id., see N.J. Stat. § 22A:4-8 (setting out fees for sheriffs).

### **Appended Applicable Provisions:**

- N.J. Court R. 4:4-3 – Process; By Whom Served; Copies
- N.J. Court Rules, R. 4:42-8 – Costs
- N.J. Stat. § 22A:4-8 – Fees And Mileage Of Sheriffs And Other Officers

**N.J. Court R. 4:4-3 – Process; By Whom Served; Copies**



N.J. Court Rules, R. 4:4-3 (2009)

Rule 4:4-3. By whom served; copies

(a) Summons and Complaint. **Summonses shall be served, together with a copy of the complaint, by the sheriff, or by a person specially appointed by the court for that purpose, or by plaintiff's attorney or the attorney's agent, or by any other competent adult not having a direct interest in the litigation.** If personal service cannot be effected after a reasonable and good faith attempt, which shall be described with specificity in the proof of service required by [R. 4:4-7](#), service may be made by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, to the usual place of abode of the defendant or a person authorized by rule of law to accept service for the defendant or, with postal instructions to deliver to addressee only, to defendant's place of business or employment. If the addressee refuses to claim or accept delivery of registered or certified mail, service may be made by ordinary mail addressed to the defendant's usual place of abode. The party making service may, at the party's option, make service simultaneously by registered or certified mail and ordinary mail, and if the addressee refuses to claim or accept delivery of registered mail and if the ordinary mailing is not returned, the simultaneous mailing shall constitute effective service. Mail may be addressed to a post office box in lieu of a street address only as provided by [R. 1:5-2](#). Return of service shall be made as provided by [R. 4:4-7](#).

(b) Writs. Unless the court otherwise orders, all writs and process to enforce a judgment or order shall be served by the sheriff.

(c) Private Service; Costs. When service of process pursuant to this rule has been made by any person other than the sheriff, the allowance of taxed costs pursuant to [R. 4:42-8](#) shall include a cost of service not exceeding the fee and mileage expenses allowable by law to the sheriff for that service.

**N.J. Court Rules, R. 4:42-8 – Costs**

N.J. Court Rules, R. 4:42-8 (2009)

Rule 4:42-8. Costs

(a) Parties Entitled. Unless otherwise provided by law, these rules or court order, costs shall be allowed as of course to the prevailing party. The action of the clerk in taxing costs is reviewable by the court on motion.

(b) Defendants in Certain Actions. Costs shall be allowed against a defaulting defendant in a replevin action only if the defendant has refused to deliver the subject goods and chattels pursuant to written demand therefor made before commencement of the action. Costs shall not be allowed against a defendant in a quiet title action who defaults or files an action disclaiming any right in the subject property, and a defendant in such action who denies in the answer claiming or ever having claimed any right in the subject property may, by court order, be allowed costs.

(c) Proof of Costs. A party entitled to taxed costs shall file with the clerk of the court an affidavit stating that the disbursements taxable by law and therein set forth have been necessarily incurred and are reasonable in amount, and if incurred for the attendance of witnesses, shall state the number of days of actual attendance and the distance traveled, if mileage is charged. Such costs may include fees paid to a private person serving process pursuant to [R. 4:4-3](#), but not in an amount exceeding allowable sheriff's fees for that service.

(d) Effective Date. If a court allows costs to be taxed later than 6 months after entry of a judgment or order, or when the judgment or order becomes the subject of review or further litigation later than 6 months after it has been finally disposed of, the judgment for costs shall not take effect before the entry in the civil docket.

**N.J. Stat. § 22A:4-8 – Costs**

N.J. Stat. § 22A:4-8 (2009)

§ 22A:4-8. Fees and mileage of sheriffs and other officers

For the services hereinafter enumerated sheriffs and other officers shall receive the following fees:

In addition to the mileage allowed by law, for serving every summons and complaint, attachment or any mesne process issuing out of the Superior Court, the sheriff or other officer serving such process shall, for the first defendant or party on whom such process is served, be allowed \$ 22.00 and, for service on the second defendant named therein, \$ 20.00, and for serving such process on any other defendant or defendants named therein, \$ 16.00 each, and no more. If a man and his wife be named in such process they shall be considered as one defendant, except where they are living separate and apart.

Serving summons and complaint in matrimonial actions, in addition to mileage,  
\$ 22.00.

Serving capias ad respondendum, capias ad satisfaciendum, warrant of commitment, writ of ne exeat, in addition to mileage, \$ 48.00.

Serving order to summon juries and return, \$ 8.00.

Serving every execution against goods or lands and making an inventory and return, in addition to mileage, \$ 48.00.

For returning every writ, \$ 2.00.

Executing every writ of possession and return, in addition to mileage, \$ 48.00.

Executing every writ of attachment, sequestration or replevin issuing out of any of the courts, in addition to mileage, \$ 48.00.

For serving each out-of-State paper, in addition to the mileage allowed by law, \$ 25.00 for the first defendant on whom such paper is served, \$ 20.00 for service on the second defendant named therein, and \$ 16.00 for serving such paper on any other defendant or defendants named therein. If a man and wife be named in such paper, they shall be considered as one defendant, except where they are living separate and apart.

For serving or executing any process or papers where mileage is allowed by law, the officer shall receive mileage actually traveled to and from the courthouse, at the rate per mile of \$ 0.16.

The sheriff shall be entitled to retain out of all moneys collected or received by him on a

forfeited recognizance, whether before or after execution, or from amercements, or from fines and costs on conviction, on indictment or otherwise, whether such moneys are payable to the State or to the county treasurer of the county wherein conviction was had, 5%.

For transporting each offender to the State Prison, per mile, but not less than \$ 3.00 for each offender, to be certified by the keeper of the prison and the certificate to be delivered to the county treasurer of the county where the conviction was had, \$ 0.23.

## **NEW MEXICO PROCESS SERVER REQUIREMENTS**

New Mexico does not have any education requirements for process servers. New Mexico law provides as follows:

- (1) if the process to be served is a summons and complaint, petition or other paper, service may be made by any person who is over the age of eighteen (18) years and not a party to the action. . . .

N.M. Dist. Ct. R. Civ. P. 1-0004(D)(1) (Process; by whom served).

### **Applicable Appended Provision:**

- N.M. Dist. Ct. R. Civ. P. 1-004 (Process)

**New Mexico District Court Rule of Civil Procedure 1-004**



N.M. Dist. Ct. R.C.P. 1-004 (2009)

1-004 Process

A. Summons; issuance. Upon the filing of the complaint, the clerk shall issue a summons and deliver it to the plaintiff for service. Upon the request of the plaintiff, the clerk shall issue separate or additional summons. Any defendant may waive the issuance or service of summons.

B. Summons; execution; form. The summons shall be signed by the clerk, issued under the seal of the court and be directed to the defendant. The summons shall be substantially in the form approved by the Supreme Court and must contain:

(1) the name of the court in which the action is brought, the name of the county in which the complaint is filed, the docket number of the case, the name of the first party on each side, with an appropriate indication of the other parties, and the name of each party to whom the summons is directed;

(2) a direction that the defendant serve a responsive pleading or motion within thirty (30) days after service of the summons and file a copy of the pleading or motion with the court as provided by Rule 1-005 NMRA;

(3) a notice that unless the defendant serves and files a responsive pleading or motion, the plaintiff may apply to the court for the relief demanded in the complaint; and

(4) the name, address and telephone number of the plaintiff's attorney. If the plaintiff is not represented by an attorney, the name, address and telephone number of the plaintiff.

C. Service of process; return.

(1) If a summons is to be served, it shall be served together with any other pleading or paper required to be served by this rule. The plaintiff shall furnish the person making service with such copies as are necessary.

(2) Service of process shall be made with reasonable diligence, and the original summons with proof of service shall be filed with the court in accordance with the provisions of Paragraph L of this rule.

D. Process; by whom served. Process shall be served as follows:

**(1) if the process to be served is a summons and complaint, petition or other paper, service may be made by any person who is over the age of eighteen (18) years and not a party to the action;**

(2) if the process to be served is a writ of attachment, writ of replevin or writ of habeas corpus, service may be made by any person not a party to the action over the age of eighteen (18) years designated by the court to perform such service or by the sheriff of the county where the property or person may be found;

(3) if the process to be served is a writ other than a writ specified in Subparagraph (2) of this paragraph, service shall be made as provided by law or order of the court.

E. Process; how served; generally.

(1) Process shall be served in a manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend.

(2) Service may be made, subject to the restrictions and requirements of this rule, by the methods authorized by this rule or in the manner provided for by any applicable statute, to the extent that the statute does not conflict with this rule.

(3) Service may be made by mail or commercial courier service provided that the envelope is addressed to the named defendant and further provided that the defendant or a person authorized by appointment, by law or by this rule to accept service of process upon the defendant signs a receipt for the envelope or package containing the summons and complaint, writ or other process. Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this subparagraph. For purposes of this rule "signs" includes the electronic representation of a signature.

F. Process; personal service upon an individual. Personal service of process shall be made upon an individual by delivering a copy of a summons and complaint or other process:

(1)

(a) to the individual personally; or if the individual refuses to accept service, by leaving the process at the location where the individual has been found; and if the individual refuses to receive such copies or permit them to be left, such action shall constitute valid service; or

(b) by mail or commercial courier service as provided in Subparagraph (3) of Paragraph E of this rule.

(2) If, after the plaintiff attempts service of process by either of the methods of service provided by Subparagraph (1) of this paragraph, the defendant has not signed for or accepted service, service may be made by delivering a copy of the process to some person residing at the usual place of abode of the defendant who is over the age of fifteen (15) years and mailing by first class mail to the defendant at the defendant's last known mailing address a copy of the process; or

(3) If service is not accomplished in accordance with Subparagraphs (1) and (2), then service

of process may be made by delivering a copy of the process at the actual place of business or employment of the defendant to the person apparently in charge thereof and by mailing a copy of the summons and complaint by first class mail to the defendant at the defendant's last known mailing address and at the defendant's actual place of business or employment.

G. Process; service on corporation or other business entity.

(1) Service may be made upon:

(a) a domestic or foreign corporation, a limited liability company or an equivalent business entity by serving a copy of the process to an officer, a managing or a general agent or to any other agent authorized by appointment, by law or by this rule to receive service of process. If the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant;

(b) a partnership by serving a copy of the process to any general partner;

(c) an unincorporated association which is subject to suit under a common name, by serving a copy of the process to an officer, a managing or general agent or to any other agent authorized by appointment, by law or by this rule to receive service of process. If the agent is one authorized by law to receive service and the statute so requires, by also mailing a copy to the unincorporated association.

(2) If a person described in Subparagraph (a), (b) or (c) of this subparagraph refuses to accept the process, tendering service as provided in this paragraph shall constitute valid service. If none of the persons mentioned is available, service may be made by delivering a copy of the process or other papers to be served at the principal office or place of business during regular business hours to the person in charge.

(3) Service may be made on a person or entity described in Subparagraph (1) of this paragraph by mail or commercial courier service in the manner provided in Subparagraph (3) of Paragraph E of this rule.

H. Process; service upon state and political subdivisions.

(1) Service may be made upon the State of New Mexico or a political subdivision of the state:

(a) in any action in which the state is named a party defendant, by delivering a copy of the process to the governor and to the attorney general;

(b) in any action in which a branch, agency, bureau, department, commission or institution of the state is named a party defendant, by delivering a copy of the process to the head of the branch, agency, bureau, department, commission or institution and to the attorney general;

(c) in any action in which an officer, official, or employee of the state or one of its branches, agencies, bureaus, departments, commissions or institutions is named a party defendant, by

delivering a copy of the process to the officer, official or employee and to the attorney general;

(d) in garnishment actions, service of writs of garnishment shall be made on the department of finance and administration, on the attorney general and on the head of the branch, agency, bureau, department, commission or institution. A copy of the writ of garnishment shall be delivered or served on the defendant employee in the manner and priority provided in Paragraph F of this rule;

(e) service of process on the governor, attorney general, agency, bureau, department, commission or institution may be made either by serving a copy of the process to the governor, attorney general or the chief operating officer of an entity listed in this subparagraph or to the receptionist of the state officer. A cabinet secretary, a department, bureau, agency or commission director or an executive secretary shall be considered as the chief operating officer;

(f) upon any county by serving a copy of the process to the county clerk;

(g) upon a municipal corporation by serving a copy of the process to the city clerk, town clerk or village clerk;

(h) upon a school district or school board by serving a copy of the process to the superintendent of the district;

(i) upon the board of trustees of any land grant referred to in [Sections 49-1-1 through 49-10-6 NMSA](#) 1978, process shall be served upon the president or in the president's absence upon the secretary of such board.

(2) Service may be made on a person or entity described in Subparagraph (1) of this paragraph by mail or commercial courier service in the manner provided in Subparagraph (3) of Paragraph E of this rule.

I. Service upon minor, incompetent person, guardian or fiduciary.

(1) Service shall be made:

(a) upon a minor, if there is a conservator of the estate or guardian of the minor, by serving a copy of the process to the conservator or guardian in the manner and priority provided in Paragraph F, G or J of this rule as may be appropriate. If no conservator or guardian has been appointed for the minor, service shall be made on the minor by serving a copy of the process on each person who has legal authority over the minor. If no person has legal authority over the minor, process may be served on a person designated by the court.

(b) upon an incompetent person, if there is a conservator of the estate or guardian of the incompetent person, by serving a copy of the process to the conservator or guardian in the manner and priority provided by Paragraph F of this rule. If the incompetent person does not have a conservator or guardian, process may be served on a person designated by the court.

(2) Service upon a personal representative, guardian, conservator, trustee or other fiduciary in the same manner and priority for service as provided in Paragraphs F, G or J of this rule as may be appropriate.

J. Service in manner approved by court. Upon motion, without notice, and showing by affidavit that service cannot reasonably be made as provided by this rule, the court may order service by any method or combination of methods, including publication, that is reasonably calculated under all of the circumstances to apprise the defendant of the existence and pendency of the action and afford a reasonable opportunity to appear and defend.

K. Service by publication. Service by publication may be made only pursuant to Paragraph J of this rule. A motion for service by publication shall be substantially in the form approved by the Supreme Court. A copy of the proposed notice to be published shall be attached to the motion. Service by publication shall be made once each week for three consecutive weeks unless the court for good cause shown orders otherwise. Service by publication is complete on the date of the last publication.

(1) Service by publication pursuant to this rule shall be by giving a notice of the pendency of the action in a newspaper of general circulation in the county where the action is pending. Unless a newspaper of general circulation in the county where the action is pending is the newspaper most likely to give the defendant notice of the pendency of the action, the court shall also order that a notice of pendency of the action be published in a newspaper of general circulation in the county which reasonably appears is most likely to give the defendant notice of the action.

(2) The notice of pendency of action shall contain:

(a) the caption of the case, as provided in Rule 1-008.1 NMRA, including a statement which describes the action or relief requested;

(b) the name of the defendant or, if there is more than one defendant, the name of each of the defendants against whom service by publication is sought;

(c) the name, address and telephone number of plaintiff's attorney; and

(d) a statement that a default judgment may be entered if a response is not filed.

(3) If the cause of action involves real property, the notice shall describe the property as follows:

(a) If the property has a street address, the name of the municipality or county address and the street address of the property.

(b) If the property is located in a Spanish or Mexican grant, the name of the grant.

(c) If the property has been subdivided, the subdivision description or if the property has not been subdivided the metes and bounds of the property.

(4) In actions to quiet title or in other proceedings where unknown heirs are parties, notice shall be given to the "unknown heirs of the following named deceased persons" followed by the names of the deceased persons whose unknown heirs are sought to be served. As to parties named in the alternative, the notice shall be given to "the following named defendants by name, if living; if deceased, their unknown heirs" followed by the names of the defendants. As to parties named as "unknown claimants", notice shall be given to the "unknown persons who may claim a lien, interest or title adverse to the plaintiff" followed by the names of the deceased persons whose unknown claimants are sought to be served.

L. Proof of service. The party obtaining service of process or that party's agent shall promptly file proof of service. When service is made by the sheriff or a deputy sheriff of the county in New Mexico, proof of service shall be by certificate; and when made by a person other than a sheriff or a deputy sheriff of a New Mexico county, proof of service shall be made by affidavit. Proof of service by mail or commercial courier service shall be established by filing with the court a certificate of service which shall include the date of delivery by the post office or commercial courier service and a copy of the defendant's signature receipt. Proof of service by publication shall be by affidavit of publication signed by an officer or agent of the newspaper in which the notice of the pendency of the action was published. Failure to make proof of service shall not affect the validity of service.

M. Service of process in the United States, but outside of state. Whenever the jurisdiction of the court over the defendant is not dependent upon service of the process within the State of New Mexico, service may be made outside the State as provided by this rule.

N. Service of process in a foreign country. Service upon an individual, corporation, limited liability company, partnership, unincorporated association that is subject to suit under a common name, or equivalent legal entities may be effected in a place not within the United States:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(a) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(b) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(c) unless prohibited by the laws of the United States or the law of the foreign country, in the same manner and priority as provided for in Paragraph F, G or J of this rule as may be appropriate. [As amended, effective January 1, 1987; October 1, 1998; March 1, 2005.]

## NORTH CAROLINA PROCESS SERVER REQUIREMENTS

North Carolina restricts civil service of process to sheriffs and persons “duly authorized by law to serve summons.” N.C. Gen. Stat. § 1A-1(a). More particularly, North Carolina law provides as follows:

Upon the filing of the complaint, summons shall be issued forthwith, and in any event within five days. The complaint and summons shall be delivered to some proper person for service. *In this State, such proper person shall be the sheriff of the county where service is to be made or some other person duly authorized by law to serve summons.* Outside this State, such proper person shall be anyone who is not a party and is not less than 21 years of age or anyone duly authorized to serve summons by the law of the place where service is to be made.

N.C. Gen. Stat. § 1A-1(a), Rule 4 (process) (emphasis added).

North Carolina does not have private process servers (or education requirements for them).

Rule 4. Process

(a) *Summons -- Issuance; who may serve.* -- Upon the filing of the complaint, summons shall be issued forthwith, and in any event within five days. The complaint and summons shall be delivered to some proper person for service. In this State, such proper person shall be the sheriff of the county where service is to be made or some other person duly authorized by law to serve summons. Outside this State, such proper person shall be anyone who is not a party and is not less than 21 years of age or anyone duly authorized to serve summons by the law of the place where service is to be made. Upon request of the plaintiff separate or additional summons shall be issued against any defendants. A summons is issued when, after being filled out and dated, it is signed by the officer having authority to do so. The date the summons bears shall be prima facie evidence of the date of issue.

(b) *Summons -- Contents.* -- The summons shall run in the name of the State and be dated and signed by the clerk, assistant clerk, or deputy clerk of the court in the county in which the action is commenced. It shall contain the title of the cause and the name of the court and county wherein the action has been commenced. It shall be directed to the defendant or defendants and shall notify each defendant to appear and answer within 30 days after its service upon him and further that if he fails so to appear, the plaintiff will apply to the court for the relief demanded in the complaint. It shall set forth the name and address of plaintiff's attorney, or if there be none, the name and address of plaintiff. If a request for admission is served with the summons, the summons shall so state.

(c) *Summons -- Return.* -- Personal service or substituted personal service of summons as prescribed by Rule 4(j)(1) a and b must be made within 60 days after the date of the issuance of summons. When a summons has been served upon every party named in the summons, it shall be returned immediately to the clerk who issued it, with notation thereon of its service.

Failure to make service within the time allowed or failure to return a summons to the clerk after it has been served on every party named in the summons shall not invalidate the summons. If the summons is not served within the time allowed upon every party named in the summons, it shall be returned immediately upon the expiration of such time by the officer to the clerk of the court who issued it with notation thereon of its nonservice and the reasons therefor as to every such party not served, but failure to comply with this requirement shall not invalidate the summons.

(d) *Summons -- Extension; endorsement, alias and pluries.* -- When any defendant in a civil action is not served within the time allowed for service, the action may be continued in existence as to such defendant by either of the following methods of extension:

(1) The plaintiff may secure an endorsement upon the original summons for an extension of time within which to complete service of process. Return of the summons so endorsed shall be in the same manner as the original process. Such endorsement may be secured within 90 days after



the issuance of summons or the date of the last prior endorsement, or

(2) The plaintiff may sue out an alias or pluries summons returnable in the same manner as the original process. Such alias or pluries summons may be sued out at any time within 90 days after the date of issue of the last preceding summons in the chain of summonses or within 90 days of the last prior endorsement.

Provided, in tax and assessment foreclosures under [G.S. 47-108.25](#) and [G.S. 105-374](#), the first endorsement may be made at any time within two years after the issuance of the original summons, and subsequent endorsements may thereafter be made as in other actions; or an alias or pluries summons may be sued out at any time within two years after the issuance of the original summons, and after the issuance of such alias or pluries summons, the chain of summonses may be kept up as in any other action.

Provided, for service upon a defendant in a place not within the United States, the first endorsement may be made at any time within two years after the issuance of the original summons, and subsequent endorsements may thereafter be made at least once every two years; or an alias or pluries summons may be sued out at any time within two years after the issuance of the original summons, and after the issuance of such alias or pluries summons, the chain of summonses may be kept up as in any other action if sued out within two years of the last preceding summons in the chain of summonses or within two years of the last prior endorsement.

Provided, further, the methods of extension may be used interchangeably in any case and regardless of the form of the preceding extension.

(e) *Summons -- Discontinuance.* -- When there is neither endorsement by the clerk nor issuance of alias or pluries summons within the time specified in Rule 4(d), the action is discontinued as to any defendant not theretofore served with summons within the time allowed. Thereafter, alias or pluries summons may issue, or an extension be endorsed by the clerk, but, as to such defendant, the action shall be deemed to have commenced on the date of such issuance or endorsement.

(f) *Summons -- Date of multiple summonses.* -- If the plaintiff shall cause separate or additional summonses to be issued as provided in Rule 4(a), the date of issuance of such separate or additional summonses shall be considered the same as that of the original summons for purposes of endorsement or alias summons under Rule 4(d).

(g) *Summons -- Docketing by clerk.* -- The clerk shall keep a record in which he shall note the day and hour of issuance of every summons, whether original, alias, pluries, or endorsement thereon. When the summons is returned, the clerk shall note on the record the date of the return and the fact as to service or non-service.

(h) *Summons -- When proper officer not available.* -- If at any time there is not in a county a proper officer, capable of executing process, to whom summons or other process can be delivered for service, or if a proper officer refuses or neglects to execute such process, or if such officer is a party to or otherwise interested in the action or proceeding, the clerk of the issuing

court, upon the facts being verified before him by written affidavit of the plaintiff or his agent or attorney, shall appoint some suitable person who, after he accepts such process for service, shall execute such process in the same manner, with like effect, and subject to the same liabilities, as if such person were a proper officer regularly serving process in that county.

(h1) *Summons -- When process returned unexecuted.* -- If a proper officer returns a summons or other process unexecuted, the plaintiff or his agent or attorney may cause service to be made by anyone who is not less than 21 years of age, who is not a party to the action, and who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made. This subsection shall not apply to executions pursuant to Article 28 of Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General Statutes.

(i) *Summons -- Amendment.* -- At any time, before or after judgment, in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to substantial rights of the party against whom the process issued.

(j) *Process -- Manner of service to exercise personal jurisdiction.* -- In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in [G.S. 1-75.4](#), the manner of service of process within or without the State shall be as follows:

(1) Natural Person. -- Except as provided in subdivision (2) below, upon a natural person by one of the following:

a. By delivering a copy of the summons and of the complaint to the natural person or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to [26 U.S.C. § 7502\(f\)\(2\)](#) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

e. By mailing a copy of the summons and of the complaint by signature confirmation as provided by the United States Postal Service, addressed to the party to be served, and delivering to the addressee.

(2) *Natural Person under Disability.* -- Upon a natural person under disability by serving

process in any manner prescribed in this section (j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.

a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

(3) The State. -- Upon the State by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to [26 U.S.C. § 7502\(f\)\(2\)](#) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt. As used in this subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(4) An Agency of the State. --

a. Upon an agency of the State by personally delivering a copy of the summons and of the complaint to the process agent appointed by the agency in the manner hereinafter provided; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to said process agent; or by depositing with a designated delivery service authorized pursuant to [26 U.S.C. § 7502\(f\)\(2\)](#) a copy of the summons and complaint, addressed to the process agent, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. Every agency of the State shall appoint a process agent by filing with the Attorney General the name and address of an agent upon whom process may be served.

c. If any agency of the State fails to comply with paragraph b above, then service upon such agency may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General, or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to [26 U.S.C. § 7502\(f\)\(2\)](#) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general,

delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

d. For purposes of this rule, the term "agency of the State" includes every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(5) Counties, Cities, Towns, Villages and Other Local Public Bodies. --

a. Upon a city, town, or village by personally delivering a copy of the summons and of the complaint to its mayor, city manager or clerk; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its mayor, city manager or clerk; or by depositing with a designated delivery service authorized pursuant to [26 U.S.C. § 7502](#)(f)(2) a copy of the summons and complaint, addressed to the mayor, city manager, or clerk, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. Upon a county by personally delivering a copy of the summons and of the complaint to its county manager or to the chairman, clerk or any member of the board of commissioners for such county; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its county manager or to the chairman, clerk, or any member of this board of commissioners for such county; or by depositing with a designated delivery service authorized pursuant to [26 U.S.C. § 7502](#)(f)(2) a copy of the summons and complaint, addressed to the county manager or to the chairman, clerk, or any member of the board of commissioners of that county, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

c. Upon any other political subdivision of the State, any county or city board of education, or other local public district, unit, or body of any kind (i) by personally delivering a copy of the summons and of the complaint to an officer or director thereof, (ii) by personally delivering a copy of the summons and of the complaint to an agent or attorney-in-fact authorized by appointment or by statute to be served or to accept service in its behalf, (iii) by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), or (iv) by depositing with a designated delivery service authorized pursuant to [26 U.S.C. § 7502](#)(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

d. In any case where none of the officials, officers or directors specified in paragraphs a, b and c can, after due diligence, be found in the State, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, such court or judge may grant an order that service

upon the party sought to be served may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or any deputy or assistant attorney general of the State of North Carolina; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina; or by depositing with a designated delivery service authorized pursuant to [26 U.S.C. § 7502](#)(f)(2) a copy of the summons and complaint, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(6) Domestic or Foreign Corporation. -- Upon a domestic or foreign corporation by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to [26 U.S.C. § 7502](#)(f)(2) a copy of the summons and complaint, addressed to the officer, director, or agent to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(7) Partnerships. -- Upon a general or limited partnership:

a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; or by depositing with a designated delivery service authorized pursuant to [26 U.S.C. § 7502](#)(f)(2) a copy of the summons and complaint, addressed to any general partner or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, delivering to the addressee, and obtaining a delivery receipt; or by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).

(8) Other Unincorporated Associations and Their Officers. -- Upon any unincorporated association, organization, or society other than a partnership by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to [26 U.S.C. § 7502\(f\)\(2\)](#) a copy of the summons and complaint, addressed to the officer, director, agent, or member of the governing body to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(9) Foreign States and Their Political Subdivisions, Agencies, and Instrumentalities. -- Upon a foreign state or a political subdivision, agency, or instrumentality thereof, pursuant to [28 U.S.C. § 1608](#).

(j1) *Service by publication on party that cannot otherwise be served.* -- A party that cannot with due diligence be served by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to [26 U.S.C. § 7502\(f\)\(2\)](#) may be served by publication. Except in actions involving jurisdiction in rem or quasi in rem as provided in section (k), service of process by publication shall consist of publishing a notice of service of process by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with [G.S. 1-597](#) and [G.S. 1-598](#) and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county where the action is pending. If the party's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the party at or immediately prior to the first publication a copy of the notice of service of process by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Upon completion of such service there shall be filed with the court an affidavit showing the publication and mailing in accordance with the requirements of [G.S. 1-75.10\(a\)\(2\)](#), the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served.



The notice of service of process by publication shall (i) designate the court in which the action has been commenced and the title of the action, which title may be indicated sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to the defendant sought to be served; (iii) state either that a pleading seeking relief against the person to be served has been filed or has been required to be filed therein not later than a date specified in the notice; (iv) state the nature of the relief being sought; (v) require the defendant being so served to make defense to such pleading within 40 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of the first publication of notice, or the date when the complaint is required to be filed, whichever is later, and notify the defendant that upon his failure to do so the party seeking service of process by publication will apply to the court for the relief sought; (vi) in cases of attachment, state the information required by [G.S. 1-440.14](#); (vii) be subscribed by the party seeking service or his attorney and give the post-office address of such party or his attorney; and (viii) be substantially in the following form:

NOTICE OF SERVICE OF PROCESS BY PUBLICATION  
STATE OF NORTH CAROLINA                      COUNTY

In the                      Court

[Title of action or special proceeding] [To Person to be served]:

Take notice that a pleading seeking relief against you (has been filed) (is required to be filed not later than                      ,                      ) in the above-entitled (action) (special proceeding). The nature of the relief being sought is as follows:

(State nature.)

You are required to make defense to such pleading not later than (                      ,                      ) and upon your failure to do so the party seeking service against you will apply to the court for the relief sought.

This, the                      day of                      ,

(Attorney) (Party)

(Address)

(j2) Proof of service. -- Proof of service of process shall be as follows:

(1) Personal Service. -- Before judgment by default may be had on personal service, proof of service must be provided in accordance with the requirements of [G.S. 1-75.10\(a\)\(1\)](#).

(2) Registered or Certified Mail, Signature Confirmation, or Designated Delivery Service. -- Before judgment by default may be had on service by registered or certified mail, signature confirmation, or by a designated delivery service authorized pursuant to [26 U.S.C. § 7502\(f\)\(2\)](#) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of [G.S. 1-75.10\(a\)\(4\)](#), [1-75.10\(a\)\(5\)](#), or [1-75.10\(a\)\(6\)](#), as appropriate. This affidavit together with the return receipt, copy of the proof of delivery provided by the United States Postal Service, or delivery receipt, signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address. As used in this subdivision, "delivery receipt" includes an electronic or facsimile receipt provided by a designated delivery service.

(3) Publication. -- Before judgment by default may be had on service by publication, the serving party shall file an affidavit with the court showing the circumstances warranting the use of service by publication, information, if any, regarding the location of the party served which was used in determining the area in which service by publication was printed and proof of service in accordance with [G.S. 1-75.10\(a\)\(2\)](#).

(j3) *Service in a foreign country.* -- Unless otherwise provided by federal law, service upon a defendant, other than an infant or an incompetent person, may be effected in a place not within the United States:

(1) By any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) If there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

a. In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

b. As directed by the foreign authority in response to a letter rogatory or letter of request; or

c. Unless prohibited by the law of the foreign country, by

1. Delivery to the individual personally of a copy of the summons and the complaint and,



upon a corporation, partnership, association or other such entity, by delivery to an officer or a managing or general agent;

2. Any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) By other means not prohibited by international agreement as may be directed by the court.

Service under subdivision (2)c.1. or (3) of this subsection may be made by any person authorized by subsection (a) of this Rule or who is designated by order of the court or by the foreign court.

On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service. Proof of service may be made as prescribed in [G.S. 1-75.10](#), by the order of the court, or by the law of the foreign country.

Proof of service by mail shall include an affidavit or certificate of addressing and mailing by the clerk of court.

(j4) *Process or judgment by default not to be attacked on certain grounds.* -- No party may attack service of process or a judgment of default on the basis that service should or could have been effected by personal service rather than service by registered or certified mail. No party that receives timely actual notice may attack a judgment by default on the basis that the statutory requirement of due diligence as a condition precedent to service by publication was not met.

(j5) *Personal jurisdiction by acceptance of service.* -- Any party personally, or through the persons provided in Rule 4(j), may accept service of process by notation of acceptance of service together with the signature of the party accepting service and the date thereof on an original or copy of a summons, and such acceptance shall have the same force and effect as would exist had the process been served by delivery of copy and summons and complaint to the person signing said acceptance.

(j6) *Service by electronic mailing not authorized.* -- Nothing in subsection (j) of this section authorizes the use of electronic mailing for service on the party to be served.

(k) *Process -- Manner of service to exercise jurisdiction in rem or quasi in rem.* -- In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for the exercise of jurisdiction in rem or quasi in rem as provided in [G.S. 1-75.8](#), the manner of service of process shall be as follows:

(1) Defendant Known. -- If the defendant is known, he may be served in the appropriate manner prescribed for service of process in section (j), or, if otherwise appropriate section (j1); except that the requirement for service by publication in (j1) shall be satisfied if made in the county where the action is pending and proof of service is made in accordance with section (j2).

(2) Defendant Unknown. -- If the defendant is unknown, he may be designated by description and process may be served by publication in the manner provided in section (j1), except that the

requirement for service by publication in (j1) shall be satisfied if made in the county where the action is pending and proof of service is made in accordance with section (j2).

Rule 5. Service and filing of pleadings and other papers

(a) *Service of orders, subsequent pleadings, discovery papers, written motions, written notices, and other similar papers -- When required.* -- Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(a1) *Service of briefs or memoranda in support or opposition of certain dispositive motions.* -- In actions in superior court, every brief or memorandum in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or any other motion seeking a final determination of the rights of the parties as to one or more of the claims or parties in the action shall be served upon each of the parties at least two days before the hearing on the motion. If the brief or memorandum is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served brief or memorandum, or take such other action as the ends of justice require. The parties may, by consent, alter the period of time for service. For the purpose of this two-day requirement only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the brief within the required time.

(b) *Service -- How made.* -- A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on the party's attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party personally is ordered by the court, upon the party's attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to the party or by mailing it to the party at the party's last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the party, leaving it at the attorney's office with a partner or employee, or by sending it to the attorney's office by a confirmed telefacsimile transmittal for receipt by 5:00 P.M. Eastern Time on a regular business day, as evidenced by a telefacsimile receipt confirmation. If receipt of delivery by telefacsimile is after 5:00 P.M., service will be deemed to have been completed on the next business day. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

A certificate of service shall accompany every pleading and every paper required to be served on any party or nonparty to the litigation, except with respect to pleadings and papers whose service is governed by Rule 4. The certificate shall show the date and method of service or the date of acceptance of service and shall show the name and service address of each person upon whom the paper has been served. If one or more persons are served by facsimile transmission, the certificate shall also show the telefacsimile number of each person so served. Each certificate of service shall be signed in accordance with and subject to Rule 11 of these rules.

(c) *Service -- Numerous defendants.* -- In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) *Filing.* -- The following papers shall be filed with the court, either before service or within five days after service:

(1) All pleadings, as defined by Rule 7(a) of these rules, subsequent to the complaint, whether such pleadings are original or amended.

(2) Written motions and all notices of hearing.

(3) Any other application to the court for an order that may affect the rights of or in any way commands any individual, business entity, governmental agency, association, or partnership to act or to forego action of any kind.

(4) Notices of appearance.

(5) Any other paper required by rule or statute to be filed.

(6) Any other paper so ordered by the court.

(7) All orders issued by the court.

All other papers, regardless of whether these rules require them to be served upon a party, should not be filed with the court unless (i) the filing is agreed to by all parties, or (ii) the papers are submitted to the court in relation to a motion or other request for relief, or (iii) the filing is permitted by another rule or statute. Briefs or memoranda provided to the court may not be filed with the clerk of court unless ordered by the court. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered.

(e) (1) *Filing with the court defined.* -- The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(2) *Filing by electronic means.* -- If, pursuant to [G.S. 7A-34](#) and [G.S. 7A-343](#), the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, costs, procedures and specifications for the filing of pleadings or other court papers by electronic means, filing may be made by the electronic means when, in the manner, and to the extent provided therein.

## **NORTH DAKOTA PROCESS SERVER REQUIREMENTS**

North Dakota has no education, test or license requirement for private process servers. The North Dakota Rule of Civil Procedure 4 states as follows:

Service of all process may be made: within the state by any person of legal age not a party to nor interested in the action; and outside the state by any person who may make service under the law of this state or under the law of the place in which service is made or who is designated by a court of this state.

N.D. R. Civ. P. 4(1). Any civilian who fulfills those requirements has the capacity to serve process in the state of North Dakota. There are no licensing fees or bond fees of any kind associated with serving process, although process is generally served by a sheriff rather than private process servers.<sup>1</sup>

### **Applicable Appended Provision:**

- North Dakota Rule of Civil Procedure 4(1)

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<sup>1</sup> Interview with Lieutenant Bert Renaud at the Wade County Sheriffs Office, North Dakota (June 10, 2009).

N.D.R. Civ. P. Rule 4 (2008)

**Rule 4. Persons subject to jurisdiction -- Process -- Service.**

**(1) By whom process served.**

Service of all process may be made: within the state by any person of legal age not a party to nor interested in the action; and outside the state by any person who may make service under the law of this state or under the law of the place in which service is made or who is designated by a court of this state.

## **OHIO REQUIREMENTS**

Under the Ohio Rules of Civil Procedure, process issued from the Supreme Court, a court of appeals, a court of common pleas or a county court is to be served by the sheriff and process issued by the municipal court is to be served by either the bailiff if defendant resides in, or can be found in the county of the court and by the sheriff if the defendant resides in, or can be found outside of the county of the court. Alternatively, the court may designate a process server who is over 18 and not a party. Ohio R. Civ. P. 4(B). Private process servers may be designated on a case-by-case basis upon request by motion or courts may keep a list of designated process servers.<sup>2</sup>

### **Appended Applicable Provisions:**

- Ohio Rule of Civil Procedure 4

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<sup>2</sup> Contact Person: Allan Asbery, Administrative Counsel, Office of the Administrative Director of the Supreme Court of Ohio. 614-387-9514



## **Ohio Rule of Civil Procedure 4**

**Rule 4.1. Process: methods of service**

All methods of service within this state, except service by publication as provided in [Civ. R. 4.4\(A\)](#) are described in this rule. Methods of out-of-state service and for service in a foreign country are described in [Civ. R. 4.3](#) and [4.5](#).

**(A) Service by certified or express mail.**

Evidenced by return receipt signed by any person, service of any process shall be by certified or express mail unless otherwise permitted by these rules. The clerk shall place a copy of the process and complaint or other document to be served in an envelope. The clerk shall address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished to the clerk with instructions to forward. The clerk shall affix adequate postage and place the sealed envelope in the United States mail as certified or express mail return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered.

The clerk shall forthwith enter the fact of mailing on the appearance docket and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, the clerk shall forthwith notify, by mail, the attorney of record or, if there is no attorney of record, the party at whose instance process was issued and enter the fact of notification on the appearance docket. The clerk shall file the return receipt or returned envelope in the records of the action.

All postage shall be charged to costs. If the parties to be served by certified or express mail are numerous and the clerk determines there is insufficient security for costs, the clerk may require the party requesting service to advance an amount estimated by the clerk to be sufficient to pay the postage.

**(B) Personal service.**

When the plaintiff files a written request with the clerk for personal service, service of process shall be made by that method.

When process issued from the Supreme Court, a court of appeals, a court of common pleas or a county court is to be served personally, the clerk of the court shall deliver the process and sufficient copies of the process and complaint, or other document to be served, to the sheriff of the county in which the party to be served resides or may be found. When process issues from the municipal court, delivery shall be to the bailiff of the court for service on all defendants who reside or may be found within the county or counties in which that court has territorial jurisdiction and to the sheriff of any other county in this state for service upon a defendant who

resides in or may be found in that other county. **In the alternative, process issuing from any of these courts may be delivered by the clerk to any person not less than eighteen years of age, who is not a party and who has been designated by order of the court to make service of process.** The person serving process shall locate the person to be served and shall tender a copy of the process and accompanying documents to the person to be served. When the copy of the process has been served, the person serving process shall endorse that fact on the process and return it to the clerk who shall make the appropriate entry on the appearance docket.

When the person serving process is unable to serve a copy of the process within twenty-eight days, the person shall endorse that fact and the reasons therefore on the process and return the process and copies to the clerk who shall make the appropriate entry on the appearance docket. In the event of failure of service, the clerk shall follow the notification procedure set forth in division (A) of this rule. Failure to make service within the twenty-eight day period and failure to make proof of service do not affect the validity of the service.

**(C) Residence service.**

When the plaintiff files a written request with the clerk for residence service, service of process shall be made by that method.

Residence service shall be effected by leaving a copy of the process and the complaint, or other document to be served, at the usual place of residence of the person to be served with some person of suitable age and discretion then residing therein. The clerk of the court shall issue the process, and the process server shall return it, in the same manner as prescribed in division (B) of this rule. When the person serving process is unable to serve a copy of the process within twenty-eight days, the person shall endorse that fact and the reasons therefore on the process and return the process and copies to the clerk who shall make the appropriate entry on the appearance docket. In the event of failure of service, the clerk shall follow the notification procedure set forth in division (A) of this rule. Failure to make service within the twenty-eight day period and failure to make proof of service do not affect the validity of service.

## **OKLAHOMA PROCESS SERVER REQUIREMENTS**

By statute, process must be served by a sheriff, deputy sheriff, or an authorized licensed private process server in Oklahoma. 12 Okla. Stat. tit. 12, § 2004)(c)(1). In addition, “for good cause” a person may be appointed to serve a particular process or order. 12 Okla. Stat. tit. 12, § 52.

Oklahoma law requires private process servers to be licensed. 12 Okla. Stat. tit.12, § 158.1.

Under the law,

The presiding judge of the judicial administrative district in which the county is located, or an associate district judge or district judge of the county as may be designated by the presiding judge, shall be authorized to issue a license to make service of process in civil cases to person deemed qualified to do so.

§ 158.1(A). Under the statute, any person eighteen years of age or older found to be ethically and mentally fit may be eligible to obtain a license. This is done by filing an application with the court clerk. § 158.1(B). The Administrative Office of the Courts provides the prescribed application form. § 158.1(A). Oklahoma does not have an education or training requirement for licensed private process servers.

After an application is filed with the clerk court, 5 days notice is posted in the courthouse and given to the district attorney, sheriff, and chief of police or marshal in the county of the date and time the applicant will be acted upon. §158.1(D). If, at that time, there are no protests and the applicant seems qualified, the license will be granted and the process server must post a bond in the amount of \$5,000. §158.1(E). This will allow the applicant to serve process statewide. If there is protest, a hearing will be held within thirty days.

§ 158.1(F).

The court clerk keeps posted at all times a list of licensed process servers in his office and any person in need of a process server may designate one of those individuals to server process for him. § 158.(I).

### **Appended Applicable Provisions:**

- Oklahoma Statute § 2004, Process
- Oklahoma Statute § 158.1, Private process servers, licensing
- Oklahoma Statute § 52, Appointment of substitute for sheriff

**Oklahoma Statute § 2004, Process**

## CHAPTER 39. OKLAHOMA PLEADING CODE

12 Okl. St. § 2004 (2009)

### § 2004. Process

#### PROCESS

A. **SUMMONS: ISSUANCE.** Upon filing of the petition, the clerk shall forthwith issue a summons. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

B. **SUMMONS: FORM.**

1. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise, the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of failure to appear, judgment by default will be rendered against the defendant for the relief demanded in the petition.

2. A judgment by default shall not be different in kind from or exceed in amount that prayed for in either the demand for judgment or in cases not sounding in contract in a notice which has been given the party against whom default judgment is sought. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his or her pleadings.

C. **BY WHOM SERVED: PERSON TO BE SERVED.**

1. **SERVICE BY PERSONAL DELIVERY.**

a. At the election of the plaintiff, process, other than a subpoena, shall be served by a sheriff or deputy sheriff, a person licensed to make service of process in civil cases, or a person specially appointed for that purpose. The court shall freely make special appointments to serve all process, other than a subpoena, under this paragraph.

b. A summons to be served by the sheriff or deputy sheriff shall be delivered to the sheriff by the court clerk or an attorney of

record for the plaintiff. When a summons, subpoena, or other process is to be served by the sheriff or deputy sheriff of another county, the court clerk shall mail it, together with his voucher for the fees collected for the service, to the sheriff of that county. The sheriff shall deposit the voucher in the Sheriff's Service Fee Account created pursuant to Section 514.1 of Title 19 of the Oklahoma Statutes. The sheriff or deputy sheriff shall serve the process in the manner that other process issued out of the court of the sheriff's own county is served. A summons to be served by a person licensed to make service of process in civil cases or by a person specially appointed for that purpose shall be delivered by an attorney of record for the plaintiff to such person.

**Oklahoma Statute § 158.1, Private process servers, licensing**



12 Okl. St. § 158.1 (2009)

§ 158.1. Private process servers--Licensing--Qualifications--Fees-- Hearing--Notice--Protests--  
Proof of service--Revocation of license--List of licensees

A. Service and return of process in civil cases may be by an authorized licensed private process server. The presiding judge of the judicial administrative district in which the county is located, or an associate district judge or district judge of the county as may be designated by the presiding judge, shall be authorized to issue a license to make service of process in civil cases to persons deemed qualified to do so.

B. Any person eighteen (18) years of age or older, of good moral character, and found ethically and mentally fit may obtain a license by filing an application therefor with the court clerk on a verified form to be prescribed by the Administrative Office of the Courts.

C. The applicant filing for a license shall:

1. Pay a license fee of Thirty-five Dollars (\$ 35.00), and the regular docketing, posting, mailing, and filing fees prescribed by law. The license shall contain the name, address, a brief description of the licensee, and, at the discretion of the district court clerk, a recent photograph of the licensee. The license shall state that the licensee is an officer of the court only for the purpose of service of process and only within the county in which the license is issued. The license shall be carried by the licensee while on duty as a private process server. At the end of one (1) calendar year from the date of issuance of the initial license, the license shall be renewed for a period of one (1) year. The license shall be renewed each succeeding year. A fee of Five Dollars (\$ 5.00) shall be charged for each license renewal. Upon an annual filing of a certified copy of a license issued pursuant to the provisions of this paragraph and payment of a filing fee of Twenty-five Dollars (\$ 25.00) to the court clerk of any county within this state, a licensed process server may serve process in that county for the district court having jurisdiction for that county; or

2. Pay a license fee of One Hundred Fifty Dollars (\$ 150.00), and the regular docketing, posting, mailing, and filing fees prescribed by law. The license shall contain the name, address, a brief description of the licensee, and, at the discretion of the district court clerk, a recent photograph of the licensee. The license shall state that the licensee is an officer of the court only for the purpose of service of process. The authority of the licensee shall be statewide. The license shall be carried by the licensee while on duty as a private process server. At the end of one (1) calendar year from the date of issuance of the initial license, the license shall be renewed for a period of three (3) years. The license shall be renewed each succeeding three (3) years. A fee of Fifteen Dollars (\$ 15.00) per renewal shall be charged for each license renewal.

All fees collected pursuant to this section shall be deposited in the court fund.

D. Upon the filing of an application for a license, the court clerk shall give five (5) days' notice of hearing by causing the notice to be posted in the courthouse. A copy of the notice shall be mailed to the district attorney, the sheriff, and the chief of police or marshal in the county seat

and shall contain the name of the applicant and the time and place the presiding judge or the associate district judge or district judge designated by the presiding judge, will act upon the application.

E. If, at the time of consideration of the application or renewal, there are no protests and the applicant appears qualified, the application for the license shall be granted by the presiding judge or such associate district judge or district judge as is designated by the presiding judge and, upon executing bond running to the State of Oklahoma in the amount of Five Thousand Dollars (\$ 5,000.00) for faithful performance of his or her duties and filing the bond with the court clerk, the applicant shall be authorized and licensed to serve civil process statewide.

F. If any citizen of the county files a written protest setting forth objections to the licensing of the applicant, the district court clerk shall so advise the presiding judge or such associate district judge or district judge as is designated by the presiding judge, who shall set a later date for hearing of application and protest. The hearing shall be held within thirty (30) days and after notice to all persons known to be interested.

G. Proof of service of process shall be shown by affidavit as provided for by subsection G of Section 2004 of this title.

H. The district attorney of the county wherein a license authorized under this act has been issued may file a petition in the district court to revoke the license issued to any licensee, as authorized pursuant to the provisions of this section, alleging the violation by the licensee of any of the provisions of the law. After at least ten (10) days' notice by certified mail to the licensee, the chief or presiding judge, sitting without jury, shall hear the petition and enter an order thereon. If the license is revoked, the licensee shall not be permitted to reapply for a license for a period of five (5) years from the date of revocation. Notwithstanding any other provisions of this section, any licensee whose license has been revoked one time shall pay the sum of One Thousand Dollars (\$ 1,000.00) as a renewal fee. If a second revocation occurs, the chief or presiding judge shall not allow an applicant to renew the license.

I. The court clerk shall keep posted at all times in his office the list of licensed private process servers. Any person in need of a process server's services may designate one from the names on the list, before presenting summons to the court clerk for issuance, without necessity for individual judicial appointment.

**Oklahoma Statute § 52, Appointment of substitute for sheriff**

12 Okl. St. § 52 (2009)

§ 52. Appointment of substitute for sheriff

The court or judge, or any clerk in the absence of the judge from the county, for good cause, may appoint a person to serve a particular process or order, who shall have the same power to execute it which the sheriff has. The person may be appointed on the application of the party obtaining the process or order, and the return must be verified by affidavit. He shall be entitled to the same fees allowed to the sheriff for similar services.

## OREGON PROCESS SERVER REQUIREMENTS

Oregon Rule of Civil Procedure 7(E) states as follows:

A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state and is not a party to the action . . . .”

The rule further provides that the compensation to a sheriff or deputy sheriff for service of a summons is prescribed by statute or rule. Id. Moreover, “[i]f any other person serves the summons, a reasonable fee may be paid for service.” Id.

Oregon does not have any education or training requirements for private process servers.

### **Applicable appended provision:**

- Oregon Rule of Civil Procedure 7

## OREGON RULES OF CIVIL PROCEDURE

### ORCP 7 (2008)

[Review Court Orders which may amend this Rule.](#)

#### Rule 7. Summons

##### **A. DEFINITIONS**

For purposes of this rule, "plaintiff" shall include any party issuing summons and "defendant" shall include any party upon whom service of summons is sought. For purposes of this rule, a "true copy" of a summons and complaint means an exact and complete copy of the original summons and complaint.

##### **B. ISSUANCE**

Any time after the action is commenced, plaintiff or plaintiff's attorney may issue as many original summonses as either may elect and deliver such summonses to a person authorized to serve summonses under section E of this rule. A summons is issued when subscribed by plaintiff or an active member of the Oregon State Bar.

**C.(1) Contents.** The summons shall contain:

**C.(1)(a) Title.** The title of the cause, specifying the name of the court in which the complaint is filed and the names of the parties to the action.

**C.(1)(b) Direction to defendant.** A direction to the defendant requiring defendant to appear and defend within the time required by subsection (2) of this section and a notification to defendant that in case of failure to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

**C.(1)(c) Subscription; post office address.** A subscription by the plaintiff or by an active member of the Oregon State Bar, with the addition of the post office address at which papers in the action may be served by mail.

**C.(2) Time for response.** If the summons is served by any manner other than publication, the defendant shall appear and defend within 30 days from the date of service. If the summons is served by publication pursuant to subsection D.(6) of this rule, the defendant shall appear and defend within 30 days from the date stated in the summons. The date so stated in the summons shall be the date of the first publication.

**C.(3) Notice to party served.**

**C.(3)(a) In general.** All summonses, other than a summons referred to in paragraph (b) or (c) of this subsection, shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

**NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!**

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal document called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

**C.(3)(b) Service for counterclaim.** A summons to join a party to respond to a counterclaim pursuant to Rule 22 D.(1) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

**NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!**

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal document called a "motion" or "reply." The "motion" or "reply" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

**C.(3)(c) Service on persons liable for attorney fees.** A summons to join a party pursuant to Rule 22 D.(2) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

**NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!**

You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a judgment for reasonable attorney fees will be entered against you, as provided by the agreement to which defendant alleges you are a party. You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal document called a "motion" or "reply." The "motion" or "reply" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the

defendant.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

#### **D. MANNER OF SERVICE**

**D.(1) Notice required.** Summons shall be served, either within or without this state, in any manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend. Summons may be served in a manner specified in this rule or by any other rule or statute on the defendant or upon an agent authorized by appointment or law to accept service of summons for the defendant. Service may be made, subject to the restrictions and requirements of this rule, by the following methods: personal service of true copies of the summons and the complaint upon defendant or an agent of defendant authorized to receive process; substituted service by leaving true copies of the summons and the complaint at a person's dwelling house or usual place of abode; office service by leaving true copies of the summons and the complaint with a person who is apparently in charge of an office; service by mail; or, service by publication.

#### **D.(2) Service methods.**

**D.(2)(a) Personal service.** Personal service may be made by delivery of a true copy of the summons and a true copy of the complaint to the person to be served.

**D.(2)(b) Substituted service.** Substituted service may be made by delivering true copies of the summons and the complaint at the dwelling house or usual place of abode of the person to be served, to any person 14 years of age or older residing in the dwelling house or usual place of abode of the person to be served. Where substituted service is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed, by first class mail, true copies of the summons and the complaint to the defendant at defendant's dwelling house or usual place of abode, together with a statement of the date, time, and place at which substituted service was made. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, substituted service shall be complete upon such mailing.

**D.(2)(c) Office service.** If the person to be served maintains an office for the conduct of business, office service may be made by leaving true copies of the summons and the complaint at such office during normal working hours with the person who is apparently in charge. Where office service is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed, by first class mail, true copies of the summons and the complaint to the defendant at defendant's dwelling house or usual place of abode or defendant's place of business or such other place under the circumstances that is most reasonably calculated to apprise the defendant of the existence and pendency of the action, together with a statement of the date, time, and place at which office service was made. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, office service shall be complete upon such mailing.



**D.(2)(d) Service by mail.**

**D.(2)(d)(i) Generally.** When required or allowed by this rule or by statute, except as otherwise permitted, service by mail shall be made by mailing true copies of the summons and the complaint to the defendant by first class mail and by any of the following: certified, registered, or express mail with return receipt requested. For purposes of this section, "first class mail" does not include certified, registered, or express mail, return receipt requested, or any other form of mail which may delay or hinder actual delivery of mail to the addressee.

**D.(2)(d)(ii) Calculation of time.** For the purpose of computing any period of time provided by these rules or by statute, service by mail, except as otherwise provided, shall be complete on the day the defendant, or other person authorized by appointment or law, signs a receipt for the mailing, or three days after the mailing if mailed to an address within the state, or seven days after the mailing if mailed to an address outside the state, whichever first occurs.

**D.(3) Particular defendants.** Service may be made upon specified defendants as follows:

**D.(3)(a) Individuals.**

**D.(3)(a)(i) Generally.** Upon an individual defendant, by personal delivery of true copies of the summons and the complaint to such defendant or other person authorized by appointment or law to receive service of summons on behalf of such defendant, by substituted service, or by office service. Service may also be made upon an individual defendant to whom neither subparagraph (ii) nor (iii) of this paragraph applies by a mailing made in accordance with paragraph (2)(d) of this section provided the defendant signs a receipt for the certified, registered, or express mailing, in which case service shall be complete on the date on which the defendant signs a receipt for the mailing.

**D.(3)(a)(ii) Minors.** Upon a minor under the age of 14 years, by service in the manner specified in subparagraph (i) of this paragraph upon such minor, and also upon such minor's father, mother, conservator of the minor's estate, or guardian, or, if there be none, then upon any person having the care or control of the minor, or with whom such minor resides, or in whose service such minor is employed, or upon a guardian ad litem appointed pursuant to Rule 27 A.(2).

**D.(3)(a)(iii) Incapacitated persons.** Upon a person who is incapacitated or financially incapable, as defined by ORS 125.005, by service in the manner specified in subparagraph (i) of this paragraph upon such person, and also upon the conservator of such person's estate or guardian, or, if there be none, upon a guardian ad litem appointed pursuant to Rule 27 B.(2).

**D.(3)(a)(iv) Tenant of a mail agent.** Upon an individual defendant who is a "tenant" of a "mail agent" within the meaning of ORS 646.221 by delivering true copies of the summons and the complaint to any person apparently in charge of the place where the mail agent receives mail for the tenant, provided that:

**D.(3)(a)(iv)(A)** the plaintiff makes a diligent inquiry but cannot find the defendant; and

**D.(3)(a)(iv)(B)** the plaintiff, as soon as reasonably possible after delivery, causes true copies of the summons and the complaint to be mailed by first class mail to the defendant at the address at which the mail agent receives mail for the defendant and to any other mailing address of the defendant then known to the plaintiff, together with a statement of the date, time, and place at which the plaintiff delivered the copies of the summons and the complaint.

Service shall be complete on the latest date resulting from the application of subparagraph D.(2)(d)(ii) of this rule to all mailings required by this subparagraph unless the defendant signs a receipt for the mailing, in which case service is complete on the day the defendant signs the receipt.

**D.(3)(b) Corporations and limited partnerships.** Upon a domestic or foreign corporation or limited partnership:

**D.(3)(b)(i) Primary service method.** By personal service or office service upon a registered agent, officer, director, general partner, or managing agent of the corporation or limited partnership, or by personal service upon any clerk on duty in the office of a registered agent.

**D.(3)(b)(ii) Alternatives.** If a registered agent, officer, director, general partner, or managing agent cannot be found in the county where the action is filed, true copies of the summons and the complaint may be served: by substituted service upon such registered agent, officer, director, general partner, or managing agent; or by personal service on any clerk or agent of the corporation or limited partnership who may be found in the county where the action is filed; or by mailing true copies of the summons and the complaint to the office of the registered agent or to the last registered office of the corporation or limited partnership, if any, as shown by the records on file in the office of the Secretary of State; or, if the corporation or limited partnership is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the corporation or limited partnership, and in any case to any address the use of which the plaintiff knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

**D.(3)(c) State.** Upon the state, by personal service upon the Attorney General or by leaving true copies of the summons and the complaint at the Attorney General's office with a deputy, assistant, or clerk.

**D.(3)(d) Public bodies.** Upon any county; incorporated city; school district; or other public corporation, commission, board, or agency by personal service or office service upon an officer, director, managing agent, or attorney thereof.

**D.(3)(e) General partnerships.** Upon any general partnership by personal service upon a partner or any agent authorized by appointment or law to receive service of summons for the partnership.

**D.(3)(f) Other unincorporated association subject to suit under a common name.** Upon any other unincorporated association subject to suit under a common name by personal service upon

an officer, managing agent, or agent authorized by appointment or law to receive service of summons for the unincorporated association.

**D.(3)(g) Vessel owners and charterers.** Upon any foreign steamship owner or steamship charterer by personal service upon a vessel master in such owner's or charterer's employment or any agent authorized by such owner or charterer to provide services to a vessel calling at a port in the State of Oregon, or a port in the State of Washington on that portion of the Columbia River forming a common boundary with Oregon.

**D.(4) Particular actions involving motor vehicles.**

**D.(4)(a) Actions arising out of use of roads, highways, streets, or premises open to the public; service by mail.**

**D.(4)(a)(i)** In any action arising out of any accident, collision, or other event giving rise to liability in which a motor vehicle may be involved while being operated upon the roads, highways, streets, or premises open to the public as defined by law of this state if the plaintiff makes at least one attempt to serve a defendant who operated such motor vehicle, or caused it to be operated on the defendant's behalf, by a method authorized by subsection (3) of this section except service by mail pursuant to subparagraph (3)(a)(i) of this section and, as shown by its return, did not effect service, the plaintiff may then serve that defendant by mailings made in accordance with paragraph (2)(d) of this section addressed to that defendant at:

**D.(4)(a)(i)(A)** any residence address provided by that defendant at the scene of the accident;

**D.(4)(a)(i)(B)** the current residence address, if any, of that defendant shown in the driver records of the Department of Transportation; and

**D.(4)(a)(i)(C)** any other address of that defendant known to the plaintiff at the time of making the mailings required by (A) and (B) that reasonably might result in actual notice to that defendant.

Sufficient service pursuant to this subparagraph may be shown if the proof of service includes a true copy of the envelope in which each of the certified, registered or express mailings required by (A), (B), and (C) above was made showing that it was returned to sender as undeliverable or that the defendant did not sign the receipt. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, service under this subparagraph shall be complete on the latest date on which any of the mailings required by (A), (B), and (C) above is made. If the mailing required by (C) is omitted because the plaintiff did not know of any address other than those specified in (A) and (B) above, the proof of service shall so certify.

**D.(4)(a)(ii)** Any fee charged by the Department of Transportation for providing address information concerning a party served pursuant to subparagraph (i) of this paragraph may be recovered as provided in Rule 68.

**D.(4)(a)(iii)** The requirements for obtaining an order of default against a defendant served

pursuant to subparagraph (i) of this paragraph are as provided in Rule 69.

**D.(4)(b) Notification of change of address.** Any person who, while operating a motor vehicle upon the roads, highways, streets, or premises open to the public as defined by law of this state, is involved in any accident, collision, or other event giving rise to liability shall forthwith notify the Department of Transportation of any change of such defendant's address occurring within three years after such accident, collision, or event.

**D.(5) Service in foreign country.** When service is to be effected upon a party in a foreign country, it is also sufficient if service of true copies of the summons and the complaint is made in the manner prescribed by the law of the foreign country for service in that country in its courts of general jurisdiction, or as directed by the foreign authority in response to letters rogatory, or as directed by order of the court. However, in all cases such service shall be reasonably calculated to give actual notice.

**D.(6) Court order for service; service by publication.**

**D.(6)(a) Court order for service by other method.** On motion upon a showing by affidavit or declaration that service cannot be made by any method otherwise specified in these rules or other rule or statute, the court, at its discretion, may order service by any method or combination of methods which under the circumstances is most reasonably calculated to apprise the defendant of the existence and pendency of the action, including but not limited to: publication of summons; mailing without publication to a specified post office address of the defendant by first class mail and any of the following: certified, registered, or express mail, return receipt requested; or posting at specified locations. If service is ordered by any manner other than publication, the court may order a time for response.

**D.(6)(b) Contents of published summons.** In addition to the contents of a summons as described in section C. of this rule, a published summons shall also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in subsection C.(3) shall state: "The 'motion' or 'answer' (or 'reply') must be given to the court clerk or administrator within 30 days of the date of first publication specified herein along with the required filing fee." The published summons shall also contain the date of the first publication of the summons.

**D.(6)(c) Where published.** An order for publication shall direct publication to be made in a newspaper of general circulation in the county where the action is commenced or, if there is no such newspaper, then in a newspaper to be designated as most likely to give notice to the person to be served. Such publication shall be four times in successive calendar weeks. If the plaintiff knows of a specific location other than the county where the action is commenced where publication might reasonably result in actual notice to the defendant, the plaintiff shall so state in the affidavit or declaration required by paragraph (a) of this subsection, and the court may order publication in a comparable manner at such location in addition to, or in lieu of, publication in the county where the action is commenced.

**D.(6)(d) Mailing summons and complaint.** If the court orders service by publication and the

plaintiff knows or with reasonable diligence can ascertain the defendant's current address, the plaintiff shall mail true copies of the summons and the complaint to the defendant at such address by first class mail and any of the following: certified, registered, or express mail, return receipt requested. If the plaintiff does not know and cannot upon diligent inquiry ascertain the current address of any defendant, true copies of the summons and the complaint shall be mailed by the methods specified above to the defendant at the defendant's last known address. If the plaintiff does not know, and cannot ascertain upon diligent inquiry, the defendant's current and last known addresses, a mailing of copies of the summons and the complaint is not required.

**D.(6)(e) Unknown heirs or persons.** If service cannot be made by another method described in this section because defendants are unknown heirs or persons as described in sections I. and J. of Rule 20, the action shall proceed against the unknown heirs or persons in the same manner as against named defendants served by publication and with like effect; and any such unknown heirs or persons who have or claim any right, estate, lien, or interest in the property in controversy, at the time of the commencement of the action, and served by publication, shall be bound and concluded by the judgment in the action, if the same is in favor of the plaintiff, as effectively as if the action was brought against such defendants by name.

**D.(6)(f) Defending before or after judgment.** A defendant against whom publication is ordered or such defendant's representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action. A defendant against whom publication is ordered or such defendant's representatives may, upon good cause shown and upon such terms as may be proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, and the judgment or any part thereof has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold upon execution issued on such judgment, to a purchaser in good faith, shall not be affected thereby.

**D.(6)(g) Defendant who cannot be served.** Within the meaning of this subsection, a defendant cannot be served with summons by any method authorized by subsection (3) of this section if: (i) service pursuant to subparagraph (4)(a)(i) of this section is not authorized, and if the plaintiff attempted service of summons by all of the methods authorized by subsection (3) of this section and was unable to complete service, or (ii) if the plaintiff knew that service by such methods could not be accomplished.

## **E. BY WHOM SERVED; COMPENSATION**

A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state and is not a party to the action nor, except as provided in ORS 180.260, an officer, director, or employee of, nor attorney for, any party, corporate or otherwise. However, service pursuant to subparagraph D.(2)(d)(i) of this rule may be made by an attorney for any party. Compensation to a sheriff or a sheriff's deputy in this state who serves a summons shall be prescribed by statute or rule. If any other person serves the summons, a reasonable fee may be paid for service. This compensation shall be part of disbursements and shall be recovered as provided in Rule 68.

## **PENNSYLVANIA PROCESS SERVER REQUIREMENTS**

Under Pennsylvania law, sheriffs and, under certain circumstances, “competent adults” may serve process. Pennsylvania law provides as follows:

**Rule 400. Person to Make Service**

(a) Except as provided in subdivisions (b) and (c) and in Rules 400.1 and 1930.4, original process shall be served within the Commonwealth only by the sheriff.

(b) In addition to service by the sheriff, original process may be served also by a competent adult in the following actions:

-- civil action in which the complaint includes a request for injunctive relief under Rule 1531, perpetuation of testimony under Rule 1532 or appointment of a receiver under Rule 1533,

--partition, and

-- Declaratory judgment when declaratory relief is the only relief sought.

Pa. R. Civ. P. 400(a) & (b).

“‘Competent’ adult means an individual eighteen years of age or older who is neither a party to the action nor an employee or a relative of a party.” Pa. R. Civ. P. 76.

Pennsylvania does not have an education or training requirement for private process servers.

**Applicable appended provisions:**

- Pennsylvania Rule of Civil Procedure 400
- Pennsylvania Rule of Civil Procedure 76

**Pennsylvania Rule of Civil Procedure 400**

PENNSYLVANIA RULES OF CIVIL PROCEDURE  
SUBPART A . SERVICE GENERALLY

Pa. R.C.P. No. 400 (2008)

Rule 400. Person to Make Service

- (a) Except as provided in subdivisions (b) and (c) and in Rules 400.1 and 1930.4, original process shall be served within the Commonwealth only by the sheriff.
- (b) In addition to service by the sheriff, original process may be served also by a competent adult in the following actions:
  - (1) civil action in which the complaint includes a request for injunctive relief under Rule 1531, perpetuation of testimony under Rule 1532 or appointment of a receiver under Rule 1533,
  - (2) partition, and
  - (3) Declaratory judgment when declaratory relief is the only relief sought.

*Note:* See Rule 76 for the definition of "competent adult".

Service of original process in domestic relations matters is governed by Rule 1930.4.

- (c) When the sheriff is a party to the action, original process shall be served by the coroner or other officer authorized by law to perform the duties of coroner.
- (d) If service is to be made by the sheriff in a county other than the county in which the action was commenced, the sheriff of the county where service may be made shall be deputized for that purpose by the sheriff of the county where the action was commenced.



**Pennsylvania Rule of Civil Procedure 76**

PENNSYLVANIA RULES OF CIVIL PROCEDURE  
RULES OF CONSTRUCTION

Pa. R.C.P. No. 76 (2008)

"Competent adult" means an individual eighteen years of age or older who is neither a party to the action nor an employee or a relative of a party

## **RHODE ISLAND PROCESS SERVER REQUIREMENTS**

In Rhode Island, sheriffs and their deputies serve process. Rhode Island law provides as follows:

All writs and process shall run throughout the state, and shall be directed to the sheriffs of all the counties in the state, or to their deputies; but if the sheriff of any county is a party to the action or suit, the process, if to be served in that county, shall, in addition to the former direction, be directed to town sergeants in the county, and may be served by any one of them not a party to the action or suit.

R.I. Gen. Laws § 9-5-6.

R.I. Gen. Laws § 9-5-6 (2009)

§ 9-5-6. Writs and process operating throughout state -- Officers to whom directed

All writs and process shall run throughout the state, and shall be directed to the sheriffs of all the counties in the state, or to their deputies; but if the sheriff of any county is a party to the action or suit, the process, if to be served in that county, shall, in addition to the former direction, be directed to town sergeants in the county, and may be served by any one of them not a party to the action or suit.

## **SOUTH CAROLINA PROCESS SERVER REQUIREMENTS**

South Carolina law provides as follows:

(c) By Whom Served. *Service of summons may be made by the sheriff, his deputy, or by any other person not less than eighteen (18) years of age, not an attorney in or a party to the action.* Service of all other process shall be made by the sheriff or his deputy or any other duly constituted law enforcement officer or by any person designated by the court who is not less than eighteen (18) years of age and not an attorney in or a party to the action, except that a subpoena may be served as provided in Rule 45.

S.C. R. Civ. P. 4(c) (emphasis added). South Carolina does not have any other requirements for private process servers.

SOUTH CAROLINA RULES OF CIVIL PROCEDURE  
II. COMMENCEMENT OF ACTION--SERVICE OF PROCESS, PLEADINGS, MOTIONS  
AND ORDERS

Rule 4, SCRPC (2008)

RULE 4. PROCESS

(a) **Summons: Issuance.** The summons shall be issued by plaintiff or plaintiff's attorney. Copies of the original summons shall be served upon each defendant.

(b) **Same: Form.** The summons shall be signed by the plaintiff or his attorney, contain the name of the State and county, the name of the court, the file number of the action, and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint.

**(c) By Whom Served. Service of summons may be made by the sheriff, his deputy, or by any other person not less than eighteen (18) years of age, not an attorney in or a party to the action. Service of all other process shall be made by the sheriff or his deputy or any other duly constituted law enforcement officer or by any person designated by the court who is not less than eighteen (18) years of age and not an attorney in or a party to the action, except that a subpoena may be served as provided in Rule 45.**

(d) **Summons: Personal Service.** The summons and complaint must be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Voluntary appearance by defendant is equivalent to personal service; and written notice of appearance by a party or his attorney shall be effective upon mailing, or may be served as provided in this rule. Service shall be made as follows:

(1) *Individuals.* Upon an individual other than a minor under the age of 14 years or an incompetent person, by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive service of process.

(2) *Minors, Incompetents and Persons Confined.* Upon a minor under the age of 14 years, a person judicially declared incapable of conducting his own affairs, or an incompetent person by delivering a copy of the summons and complaint to such minor, or incompetent personally and also a copy to (a) the guardian or committee of such person, or if there be none such within the State upon (b) a parent or other person having the care and control of such person, or (c) any competent person with whom he resides or (d) in whose service he is employed. If the individual upon whom service is made is a minor between the ages of 14 and 18, who lives with a parent or

guardian, a copy of the summons and complaint shall likewise be served upon said parent or guardian, if said parent or guardian resides within the State. Service on imprisoned persons or persons confined in a state hospital or similar institution, in or out of this State, shall be made by delivering a copy of the summons and complaint to the confined person personally; and service shall be made by the sheriff of the county in which the person is imprisoned or confined. In cases of persons imprisoned, and patients in a state hospital or similar institution, personal service of process may be made by the superintendent of the institution or by the director of the prison system or by assistants duly designated by the superintendent or the director in writing for the purpose of making service of process, instead of the sheriff. The superintendent or the director or their designated assistants shall not be entitled to any costs therefore. Service on confined or imprisoned persons shall also conform to the provisions of [§ 15-9-510, S.C.Code, 1976](#).

(3) *Corporations and Partnerships*. Upon a corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) *State of South Carolina*.

(A) *When State a Party*. Upon the State of South Carolina by delivering a copy of the summons and complaint to the Attorney General, or when another official is designated to be served by the statute permitting such action by delivering a copy of the summons and complaint to that official and sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia.

(B) *When Unconstitutionality of Statute Is Asserted*. In any action attacking the Constitutionality of a State statute when the State, officer or agency is not made a party, a copy of the summons and complaint shall be sent by registered or certified mail to the Attorney General.

(5) *State Officer or Agency*. Upon an officer or agency of the State by delivering a copy of the summons and complaint to such officer or agency and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

(6) *Governmental Subdivision*. Upon a municipal corporation, county or other governmental or political subdivision subject to suit, by delivering a copy of the summons and complaint to the chief executive officer or clerk thereof, or by serving the summons and complaint in the manner prescribed by statute for the service of summons and complaint or any like process upon any such defendant.

(7) *Statutory Service*. Service upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule is also sufficient if the summons and complaint are served in the manner prescribed by statute.

(8) *Service by Certified Mail.* Service of a summons and complaint upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule may be made by the plaintiff or by any person authorized to serve process pursuant to Rule 4(c), including a sheriff or his deputy, by registered or certified mail, return receipt requested and delivery restricted to the addressee. Service is effective upon the date of delivery as shown on the return receipt. Service pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing the acceptance by the defendant. Any such default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person. If delivery of the process is refused or is returned undelivered, service shall be made as otherwise provided by these rules.

(e) *Same: Other Service.* Whenever a statute or an order of court provides for service of a summons and complaint or of a notice, or an order upon a party not an inhabitant of or found within the State, service shall be made under the circumstances and in the manner prescribed by the statute, rule, or order.

(f) *Territorial Limits of Effective Service.* All process other than a subpoena may be served anywhere within the territorial limits of the State, and, when a statute so provides, beyond the territorial limits of the State. A subpoena may be served within the territorial limits provided in Rule 45.

(g) *Proof and Return.* The person serving the process shall make proof of service thereof promptly and deliver it to the officer or person who issued same. If served by the sheriff or his deputy, he shall make proof of service by his certificate. If served by any other person, he shall make affidavit thereof. If served by publication, the printer or publisher shall make an affidavit thereof, and an affidavit of mailing shall be made by the party or his attorney if mailing of process is permitted or required by law. Failure to make proof of service does not affect the validity of the service. The proof of service shall state the date, time and place of such service and, if known, the name and address of the person actually served at the address of such person, and if not known, then the date, time and place of service and a description of the person actually served. If service was by mail, the person serving process shall show in his proof of service the date and place of mailing, and attach a copy of the return receipt or returned envelope when received by him showing whether the mailing was accepted, refused, or otherwise returned. If the mailing was refused, the return shall also make proof of any further service on the defendant pursuant to paragraph (8) of subdivision (d) of this rule. The return along with the receipt or envelope and any other proof shall be promptly filed by the clerk with the pleadings and become a part of the record.

(h) *Proof of Service Without the State.* When the service is made out of the State the proof of such service may be made, if within the United States, by affidavit before:

(1) Any person in this State authorized to make an affidavit;

(2) A commissioner of deeds for this State;



- (3) A notary public who shall affix thereto his official seal; or
  - (4) A clerk of a court of record who shall certify the same by his official seal; and,
  - (5) If made without the limits of the United States, before a consul, vice-consul or consular agent of the United States who shall use in his certificate his official seal.
- (i) Amendment. At any time in its discretion and upon terms as it deems just, the court may, by written order, allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.
- (j) Acceptance of Service. No other proof of service shall be required when acceptance of service is acknowledged in writing and signed by the person served or his attorney, and delivered to the person making service. The acknowledgement shall state the place and date service is accepted.

SOUTH CAROLINA RULES OF CIVIL PROCEDURE  
VI. TRIALS

Rule 45, SCRPC (2008)

RULE 45. SUBPOENA

(a) Form; Issuance.

(1) Every subpoena shall:

(A) state the name of the court from which it is issued; and

(B) state the title of the action, the name of the court in which it is pending, and its civil action number; and

(C) command each person to whom it is directed to attend and give testimony or produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subdivisions (c) and (d) of this rule.

A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately.

(2) A subpoena commanding attendance at a trial or hearing shall issue from the court for the county in which the hearing or trial is to be held. A subpoena for attendance at a deposition shall issue from the court for the county designated by the notice of deposition as the county in which the deposition is to be taken. If separate from a subpoena commanding the attendance of a person, a subpoena for production or inspection shall issue from the court for the county in which production or inspection is to be made. Provided, however, that a subpoena to a person who is not a party or an officer, director or managing agent of a party, commanding attendance at a deposition or production or inspection shall issue from the court for the county in which the non-party resides or is employed or regularly transacts business in person.

(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as officer of the court may also issue and sign a subpoena on behalf of a court in which the attorney is authorized to practice.

(b) Service.

(1) A subpoena may be served by any person who is not a party and is not less than 18 years of

age. Service of a subpoena upon a person named therein shall be made in the same manner prescribed for service of a summons and complaint in Rule 4(d) or (j), and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance of \$ 25.00 and the mileage allowed by law for official travel of State officers and employees. When the subpoena is issued on behalf of the State of South Carolina or an officer or agency thereof, fees and mileage need not be tendered. Unless otherwise ordered by the court, prior notice in writing of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b) at least 10 days before the time specified for compliance.

(2) Subject to the provisions of clause (ii) of subparagraph (c)(3)(A) of this rule, a subpoena may be served at any place within the State. Provided, however, that a subpoena to a person who is not a party or an officer, director or managing agent of a party, commanding attendance at a deposition or production or inspection shall issue from the court for the county in which the non-party resides or is employed or regularly transacts business in person and be served in that county.

(3) Proof of service when necessary shall be made by filing with the clerk of the court by which the subpoena is issued a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to

compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject

to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(e) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend a deposition, permit an inspection, or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A); or if served without an adequate time to respond as provided in Rule 45(b)(1); or if service is made upon an individual under Rule 4(d)(1) and the individual did not receive or acknowledge the subpoena.

## **SOUTH DAKOTA PROCESS SERVER REQUIREMENTS**

South Dakota does not restrict who can serve civil process. Under South Dakota law, The summons may be served by the sheriff or a constable of the county or other comparable political subdivision where the defendant may be found, or in the District of Columbia by the United States marshal or a deputy, *or by any other person not a party to the action who at the time of making such service is an elector of any state.*

S.D. Codified Laws § 15-6-4(c) (emphasis added). South Dakota does not have education or training requirements for private process servers.

### **Applicable appended provision:**

- S.D. Codified Laws § 15-6-4(c)

## **TENNESSEE PROCESS SERVER REQUIREMENTS**

Tennessee does not restrict civil service of process. Tennessee law provides as follows:

A summons and complaint may be served by any person who is not a party and is not less than 18 years of age. The process server must be identified by name and address on the return.

Tenn. R. Civ. P. 4.01(2).

Tennessee does not have any education or training requirements for private process servers.

### **Applicable appended provision:**

- Tennessee Rule of Civil Procedure 4.01

**4.01. Summons; Issuance; By Whom Served.**

(1) Upon the filing of the complaint the clerk of the court wherein the complaint is filed shall forthwith issue the required summons and cause it, with necessary copies of the complaint and summons, to be delivered for service to any person authorized to serve process. This person shall serve the summons, and the return indorsed thereon shall be proof of the time and manner of service. A summons may be issued for service in any county against any defendant, and separate or additional summonses may be issued against any defendant upon request of plaintiff. Nothing in this rule shall affect existing laws with respect to venue.

**(2) A summons and complaint may be served by any person who is not a party and is not less than 18 years of age. The process server must be identified by name and address on the return.**

(3) If a plaintiff or counsel for plaintiff (including third-party plaintiffs) intentionally causes delay of prompt issuance of a summons or prompt service of a summons, filing of the complaint (or third-party complaint) is ineffective.



## **TEXAS PROCESS SERVER REQUIREMENTS**

In Texas, process may be served by sheriffs, constables, other persons authorized by law, persons authorized by court order, and persons certified under order of the Supreme Court. Tex. R. Civ. P. 103.

Texas has established, through Supreme Court rule, a Process Server Review Board. Tex. R. Jud. Admin. Rule 14. The Board reviews initial and renewal applications for certification, investigates complaints against civil process servers, and conducts disciplinary actions against civil process servers. Id. Applicants for certification must include a certificate from the director of a certified civil process school. Rule 14.4(a)(3).

In addition, many district courts within the state have additional requirements under their local rules. Most require appointment by the court – either through a blanket order or for specific cases – to serve process in cases filed in that court.

### **Applicable Appended Provisions:**

- Texas Rule of Civil Procedure 103 – who may serve
- Texas Rule of Judicial Administration 14 – statewide certification to serve process
- Texas District Court Upshur County – Exhibit K – application for authorization as a private process server in the 115<sup>th</sup> district court
- Texas District Court El Paso County Local Rule 1.03 – private service of process
- Texas District Court Leon County Local Rule 3.3 – service of process
- Texas District Court McLennan County Local Rule 1.12 – service of process
- Texas District Court Madison County – Local Rule 3.3 – service of process
- Texas District Court Montgomery County – Local Rule 3.17 – service of process
- Texas District Court Tarrant County – Local Rule 3.40 – private service of process
- Texas District Court Walker County – Local Rule 3.3 – service of process

**Texas Rule of Civil Procedure 103 – who may serve**

Tex. R. Civ. P. 103 (2009)

Rule 103 Who May Serve

Process -- including citation and other notices, writs, orders, and other papers issued by the court -- may be served anywhere by (1) any sheriff or constable or other person authorized by law, (2) any person authorized by law or by written order of the court who is not less than eighteen years of age, or (3) any person certified under order of the Supreme Court. Service by registered or certified mail and citation by publication must, if requested, be made by the clerk of the court in which the case is pending. But no person who is a party to or interested in the outcome of a suit may serve any process in that suit, and, unless otherwise authorized by a written court order, only a sheriff or constable may serve a citation in an action of forcible entry and detainer, a writ that requires the actual taking of possession of a person, property or thing, or process requiring that an enforcement action be physically enforced by the person delivering the process. The order authorizing a person to serve process may be made without written motion and no fee may be imposed for issuance of such order.

**Texas Rule of Judicial Administration 14 – statewide certification to serve process**

STATE RULES  
RULES OF JUDICIAL ADMINISTRATION

Tex. R. Jud. Admin. 14 (2009)

Rule 14 Statewide Certification to Serve Civil Process

14.1 *Purpose.* --Under Rules 103 and [536 of the Texas Rules of Civil Procedure](#), as amended effective July 1, 2005, civil process may be served by--in addition to sheriffs and constables and other persons authorized by law, and persons at least 18 years of age authorized by written order of court--"any person certified under order of the Supreme Court." To improve the standards of practice for private service of process, and to provide a list of persons eligible to serve process in trial courts statewide, the Court--simultaneous with amending Rules 103 and 536--also issued companion orders creating the Process Server Review Board and establishing the basic framework for certification and revocation thereof by the Board. This Rule is intended to build upon that framework by implementing specific procedures to guide the Board's actions in processing applications, investigating complaints regarding certified process servers, and determining disciplinary action under appropriate circumstances.

14.2 *Definitions.*

(a) *Board* means the Process Server Review Board.

(b) *Chair* means the Chair of the Board, as appointed by the Supreme Court.

14.3 *General Provisions.*

(a) *Membership of Board.* --Members of the Board are appointed by the Supreme Court of Texas. Unless an appointment order specifies otherwise, members are appointed to a three-year term.

(b) *General Procedure.*

(1) A majority of members of the Board shall constitute a quorum.

(2) After a quorum has been established at a Board meeting, the Board may decide, upon a majority vote of those present, any matter properly before it.

(3) The Chair or his/her designee shall preside at Board meetings.

(4) The Board may, in its discretion, grant continuances with regard to hearings and other

matters before the Board.

(5) The Office of Court Administration shall provide clerical assistance to the Board.

(c) *Methods of Service.*

(1) Service of any written notice or other document required to be served under this Rule may be accomplished:

(A) by delivering a copy to the person to be served, or their attorney, either in person or by agent or by courier receipted delivery or by registered or certified mail, to the person's last known address; or

(B) by fax, to the person's current fax number.

(2) Service by mail shall be complete upon deposit of the notice or other paper, enclosed in a postage-paid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Post Office. Service by fax shall be complete upon confirmation of receipt. Service by fax after 5:00 p.m. local time of the recipient shall be deemed served on the following day.

(d) *Counting Time.* --In computing any period of time prescribed or allowed by this Rule, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Saturdays, Sundays, and legal holidays shall otherwise be counted for purposes of calculating time periods under this Rule, unless the time period is for five days or less, in which case Saturdays, Sundays, and legal holidays shall not be counted for any purpose.

#### 14.4 *Certification.*

(a) *Application.*

(1) A person seeking statewide certification must file with the Clerk of the Supreme Court a sworn application in the form prescribed by the Supreme Court, available from the Clerk of the Court or on the Court's website.

(2) The application must contain a statement indicating whether the applicant has ever been convicted of a felony or of a misdemeanor involving moral turpitude. The application must include a criminal history record obtained within the preceding 90 days from the Texas Department of Public Safety in Austin, Texas. If an applicant's criminal history reflects legal proceedings for which a final disposition is not clearly shown, the applicant bears the burden of establishing that he or she has not been convicted of a felony or of a misdemeanor involving moral turpitude. The Board may deny certification to an applicant convicted of a felony or of a misdemeanor involving moral turpitude. If an applicant's criminal history reflects that the

applicant was charged with a felony or a misdemeanor involving moral turpitude and the charges resulted in an outcome other than acquittal or conviction (such as pretrial diversion, probation, deferred adjudication, community supervision, or similar result), the Board may consider such history in determining whether the application should be granted.

(3) The application must include a certificate from the director of a civil process service course, approved for certification in every state court pursuant to Supreme Court order, stating that the applicant has completed the approved course within the prior year. The applicant bears the burden of establishing that he or she has completed within the prior year a course approved for certification in every state court pursuant to Supreme Court order.

*(b) Review of Application; Rejection; Approval.*

(1) Applications shall be reviewed and either approved by the Board or rejected for good cause stated. In appropriate circumstances, the Board may approve applications on a conditional or probationary basis.

(2) The Board may, upon request, allow an applicant with criminal history to appear before the Board and provide oral testimony, documentation, or other information pertinent to the applicant's criminal history. Testimony must be given under penalty of perjury. The Board may limit the number of witnesses appearing and the time allotted for a witness's testimony.

(3) The Board shall promptly notify each applicant in writing of its decision. For applicants rejected, and for applicants approved on a conditional or probationary basis, the Board shall specify the good cause for its decision.

(4) An applicant who is dissatisfied with the Board's decision regarding his or her application may appeal the Board's decision as provided in Rule 14.7, but must first request reconsideration of the decision as provided in Rule 14.6.

(5) For each person certified, the Board shall post on a list maintained on the Supreme Court website the person's name and an assigned identification number.

(6) Certification is effective for three years from the last day of the month it issues, unless revoked or suspended under this Rule.

(c) *Renewal of Certification.*

(1) A certified process server desiring to renew an existing certification must file with the Board a new application, including a current criminal history statement, criminal history record, and course certificate as specified under Rule 14.4(a).

(2) A certified process server who desires to avoid any lapse in certification during renewal should submit a completed application no sooner than ninety days before the expiration date defined under Rule 14.4(b)(5), and no later than forty-five days before the expiration date. Renewal applications filed more than ninety days before the expiration date will not be processed. However, this provision does not guarantee that a timely filed renewal application will be approved prior to expiration of an existing certification, and it is the responsibility of each process server to ensure, prior to serving any process under statewide certification, that his or her statewide certification remains in effect.

14.5 *Disciplinary Actions.*

(a) *Conduct Subject to Disciplinary Action.* --The Board may revoke or suspend any certification issued under this Rule, or issue a letter of reprimand to a certified process server, on a verified complaint after notice and opportunity to respond, for:

- (1) conviction of a felony offense, or of a misdemeanor offense involving moral turpitude; or
- (2) other good cause as determined by the Board.

A certified process server who, after obtaining statewide certification, is convicted of a felony offense or of a misdemeanor offense involving moral turpitude shall immediately notify the Clerk of the Supreme Court and cease to serve process pursuant to his or her statewide certification.

(b) *Filing of Complaint Against Certified Process Server.*

(1) A person desiring to make a complaint against a certified process server shall use the official complaint form approved by the Board and provided on the Court's website.

(2) The complaint shall be completed and signed under oath, with all pertinent documentary evidence attached thereto, and submitted to the Board's mailing address provided on the Court's website.

(3) Upon receipt of a properly executed complaint, the Board shall furnish to the certified process server against whom the complaint was filed copies of the complaint and any original attachments thereto, as well as notice stating: (1) the date the Board is scheduled to consider the complaint; (2) that the Board may revoke the process server's statewide certification or impose other disciplinary action after investigation and consideration of the complaint and any written response submitted by the process server and received by the Board at least three business days



prior to the meeting at which the complaint will be considered; and (3) that the Board may allow the complainant, the process server, and any fact or character witnesses to appear at the meeting and present oral testimony.

(4) The Board may undertake an investigation on its own initiative based upon a credible report or findings of a judicial officer describing conduct that could be subject to disciplinary action under this Rule.

*(c) Investigation of Complaints.*

(1) A complaint committee consisting of three or more Board members named by the Chair, or any Board members designated by the Chair to perform this duty ad hoc, shall investigate properly executed complaints and determine if they are supported by credible evidence.

(2) Following investigation, the status of a complaint shall be reported to the Board at its next regularly scheduled meeting, or as soon as practicable thereafter, by the head of the complaint committee or any other member designated by the Chair to investigate the complaint.

*(d) Hearing of Complaints.*

(1) Any written response submitted by the process server, including any additional documentary evidence, must be received by the Board at least three business days prior to the meeting at which the complaint will be considered.

(2) In addition to any written response submitted under subsection (1), the Board may allow the complainant, the process server, and any fact or character witnesses to appear at the meeting and present oral testimony. Testimony must be given under penalty of perjury. The Board may limit the number of witnesses appearing and the time allotted for a witness's testimony.

(3) After hearing a report on a complaint, and considering any written response timely submitted by the process server against whom the complaint was filed, and any testimony, the Board shall vote on the status of the complaint, unless such determination is continued until another Board meeting for good cause.

(4) The Board shall serve upon the affected process server notice of the Board's determination regarding the complaint and any disciplinary action imposed. In its written statement, the Board must specify the good cause for disciplinary action.

(5) A process server who is dissatisfied with a Board decision imposing disciplinary action may appeal the Board's decision as provided in Rule 14.7, but must first request reconsideration of the decision as provided in Rule 14.6.

(6) Unless the Board directs otherwise, imposition of any disciplinary action is effective immediately following a majority vote to impose that action and is not stayed pending appeal.

(7) Complaints determined by the Board to be unsubstantiated or unfounded shall be

dismissed.

(8) Nothing in this provision shall preclude negotiation of an agreed disciplinary resolution either before or after a complaint is considered by the Board. An agreed disciplinary resolution shall not be effective until approved by the Board.

#### *14.6 Reconsideration of Board Decisions.*

##### *(a) Request for Reconsideration.*

(1) Any certified process server may request reconsideration of a decision by the Board pertaining to an application for certification or a disciplinary action.

(2) A reconsideration request must be in writing and must be received by the Board within thirty (30) days after the date the Board serves notice of the decision for which reconsideration is requested.

(3) The request must identify the process server and the decision of the Board for which reconsideration is requested, and must succinctly state the reason for reconsideration.

##### *(b) Reconsideration Procedure.*

(1) After receiving a request for reconsideration, the Chair will place the matter on the agenda for the next scheduled meeting of the Board.

(2) The Board may allow the process server seeking reconsideration to appear at the meeting and present additional testimony. Testimony must be given under penalty of perjury. The Board may limit the number of witnesses appearing and the time allotted for a witness's testimony.

(3) After reconsidering a decision, the Board shall vote on the matter unless such determination is continued until another Board meeting for good cause.

(4) The Board must send the process server written notice stating its decision on reconsideration.

*(c) Request for Reconsideration Is Necessary Prerequisite for Appeal.* --A request for reconsideration is a necessary prerequisite to filing an appeal of a Board decision under Rule 14.7.

#### *14.7 Appeal of Board Decisions.*

##### *(a) Procedure for Appealing.*

(1) Any certified process server seeking to appeal a Board decision pertaining to an application for certification or a disciplinary action shall submit a written appeal of such decision to the General Counsel for the Office of Court Administration within thirty (30) days after the

date the written decision is served upon the process server. The appeal should be addressed to the General Counsel at the mailing address listed on the "Contact Information" page of OCA's website, currently located at <http://www.courts.state.tx.us/oca/contact.asp>.

(2) The General Counsel shall promptly forward the appeal to a special committee of three Administrative Regional Presiding Judges, *see* Tex. [Gov't Code § 74.041](#). The committee shall be chosen on a basis predetermined by the Presiding Judges, but shall not include the Presiding Judge for the Administrative Region in which the appellant resided at the time of the Board's decision.

(3) The General Counsel shall notify the Board of the filing of an appeal and, upon request, shall make the appeal materials available to the Board or its legal representative.

(4) The appeal must be in a form, or pursuant to a policy, approved by the Regional Presiding Judges, if an appellate form or a policy has been approved by the Regional Presiding Judges. If no appellate form or policy has been approved, the appeal need not be in any particular form, but it must contain (1) a copy of the notice of the Board's decision with which the process server is dissatisfied; (2) a statement succinctly explaining why the process server is dissatisfied with the Board's decision; and (3) a copy of the Board's notice reflecting its decision on reconsideration.

(5) The Office of Court Administration shall adopt rules or policies to ensure that any OCA employee who provides clerical, administrative, or other direct support to the Board does not communicate regarding the substance of any appeal under this Rule with any other OCA employee who facilitates the appeal process under this Rule. The rules or policies shall also provide that OCA employees may communicate regarding nonsubstantive aspects of appeals, such as to ensure the completeness and accuracy of appeal materials to be forwarded to the special committee.

*(b) Consideration of Appeal.*

(1) Upon receiving notice of an appeal of a disciplinary action, the Board shall provide to the General Counsel, and the General Counsel shall submit to the special committee, electronic or paper copies of (1) the complaint and any original attachments; (2) any written response timely submitted by the process server; (3) notice of the Board's decision imposing disciplinary action; (4) the Board's notice reflecting its decision on reconsideration; and (5) any other documents or written evidence considered by the Board pertaining to the decision complained of on appeal. The Board shall provide a copy of any of the above items (1)--(5) to an appellant upon request, and may charge costs for such copies as set forth in Rule 12.7 of the [Rules of Judicial Administration](#).

(2) Upon receiving notice of an appeal of a decision denying application for certification, the Board shall provide to the General Counsel, and the General Counsel shall submit to the special committee, electronic or paper copies of (1) the process server's application for statewide certification, including a record of the applicant's criminal history from the Department of Public Safety; (2) a written statement of the Board's decision denying the application; (3) any additional documentation considered by the Board related to the applicant's criminal history; (4) the Board's

notice reflecting its decision on reconsideration; and (5) any other documents or written evidence considered by the Board pertaining to the decision complained of on appeal. The Board shall provide a copy of any of the above items (1)--(5) to an appellant upon request, and may charge costs for such copies as set forth in Rule 12. [7 of the Rules of Judicial Administration.](#)

(3) The special committee shall consider the appeal under an abuse of discretion standard for all issues except those involving pure questions of law, for which the standard of review shall be de novo. Under either standard, the burden is on the appellant to establish that the Board's decision was erroneous.

(4) Absent approval by the special committee, submission of materials other than those described under Rule 14.7(b)(1)--(2) is prohibited. The special committee may, in its sole discretion, allow a process server to submit additional written materials relating to the appeal. Otherwise, only the written materials described under Rule 14.7(b)(1)--(2) will be considered. A request to submit additional materials must clearly identify the additional materials for which inclusion is requested.

(5) The special committee may consider the appeal without a hearing, and may conduct its deliberations by any appropriate means. The special committee may, in its sole discretion, conduct a hearing and allow testimony from the affected process server or any other person with knowledge of the underlying facts relating to the application or the disciplinary action complained of.

(6) After consideration of the appeal, the special committee shall notify the Board and the process server in writing of its decision either affirming or reversing the Board's decision. No rehearing or further appeal shall be allowed.

**Texas District Court Upshur County – Exhibit K – application for authorization as a private process server in the 115<sup>th</sup> district court**

**EXHIBIT "K" APPLICATION FOR AUTHORIZATION AS A PRIVATE PROCESS  
SERVER IN THE 115TH DISTRICT COURT**

Date:

**PERSONAL INFORMATION**

Full Name:

Home Address:

Home Telephone:

Business Address:

Business Telephone:

Birthdate:      Place of Birth:

Social Security No.:      Texas D.L. No.:

(Attach copy to Application)

Sex: Male      Female

Height:

Eye Color:

**EMPLOYMENT INFORMATION**

(Last Five Years)

Present Employment:

Address:

Phone No.:

Present Position:      How Long With Company:

Previous Company:

Address:

Phone No.:

Position:

From: To:

Previous Company:

Address:

Phone No.:

Position:

From: To:

#### EXPERIENCE IN EDUCATION IN CIVIL PROCESS

(Please explain in detail)

Have you ever been convicted of a felony or misdemeanor? Yes No

If yes, explain:

Have you ever been denied a license, permit, or other authorization to do business?

Yes No

If so, state the place, date, circumstances, nature of the permit or license and identify the agency having records pertaining to same.

Have you ever been denied approval to serve process pursuant to standing order?

Yes No

If yes, explain:

Has your authority to serve process pursuant to standing order ever been terminated, revoked, vacated or suspended? Yes No

If yes, explain:

Name a person with permanent information as to your whereabouts and your future location and address:

Telephone No.:      Fax No. (If applicable):

#### ATTORNEY REFERENCES

Name    Address    Phone

STATE OF TEXAS    X

COUNTY OF UPSHUR    X

I,      solemnly swear that I have personal knowledge of the information contained in this Application and all statements are true and correct. I will follow all legal requirements relating to service of citations and other notices by individuals. I will supplement this Application should any of the information change or become outdated. I further understand and agree that the information contained in this Application will be used to complete an N.C.I.C. or similar police check of my background.

Affiant

Before me, the undersigned Notary Public, on this day personally appeared      , known by me to be the person whose name is signed above and acknowledge to me that he/she has personal knowledge of the statements contained in this Application and said statements are true and correct.

Given under my hand and seal of office this      day of      ,      .

Notary Public in and for the State of Texas

Printed Name:

My Commission Expires:



**Texas District Court El Paso County Local Rule 1.03 – private service of process**

**Rule 1.03. Private Service of Process:**

(A) This rule is adopted pursuant to and in compliance with [Texas Rules of Civil Procedure 1.03](#).

The District Clerk or the Council of Judges shall provide to any person upon his or her request:

(1) an application in the form set forth in this chapter for authority to serve citations and other notices and;

(2) a copy of this chapter.

There are two types of applications, either an application for blanket authorization or application to authorize service in an individual case. Completed applications for blanket authority shall be submitted to the Local Administrative Judge. Completed applications for authority in an individual case shall be signed by counsel requesting same and be presented to the judge of the court where the case is assigned. If the Local Administrative Judge finds the applicant for blanket authority to be qualified, she or he shall sign and with the District Clerk an order authorizing the applicant such authority for a period of two years. All orders for blanket authority shall expire two years from the date of such order. When making such an order, the Local Administrative Judge is authorized to act for each and every court. The District Clerk shall maintain all such applications and orders in a central file. The orders shall be numbered chronologically.

When a return is required, a person authorized to serve citation and other notices shall state in his or her return that he or she is

- (1) not less than eighteen years of age;
- (2) not a party to or interested in the outcome of the suit; and
- (3) authorized by written order to serve citations and other notices. In cases of service pursuant to blanket authority, the return shall be accompanied by a copy of the order authorizing service.

This chapter may be amended or replaced at any time. The Local Administrative Judge may vacate any order made under this chapter at any time.

(B) For purposes of supervision and discipline, the Courts deem those person authorized to serve citations and other notices by order pursuant to [rule 103, Texas Rules of Civil Procedure](#), to be officers of the Court. Any such person filing a false return or engaging in service contrary to law or rule may be subject to punishment by an order of contempt. Such order may prohibit such person from serving citations and notices in El Paso County.

**Texas District Court Leon County Local Rule 3.3 – service of process**

### RULE 3.3 SERVICE OF PROCESS

The Courts have adopted a blanket order permitting private service of process pursuant to [Rule 103 of the Texas Rules of Civil Procedure](#). Applications for approval to be added to the list shall be presented to the local administrative judge. A list of approved private process servers is maintained in the District Clerk's Office.

**Texas District Court McLennan County Local Rule 1.12 – service of process**

1.12. SERVICE OF PROCESS

Civil process shall be served either by those authorized by blanket order of the court, individual order of the court, or as otherwise authorized by the T.R.C.P.

**Texas District Court Madison County – Local Rule 3.3 – service of process**



### RULE 3.3 SERVICE OF PROCESS

The Courts have adopted a blanket order permitting private service of process pursuant to [Rule 103 of the Texas Rules of Civil Procedure](#). Applications for approval to be added to the list shall be presented to the local administrative judge. A list of approved private process servers is maintained in the District Clerk's Office.

**Texas District Court Montgomery County – Local Rule 3.17 – service of process**

Tex. Dist. Ct. Montgomery Cty. LR 3.17 (2008)

Rule 3.17. Service of Process

The Courts have adopted a blanket order permitting private process of service pursuant to [Rule 103 of the Texas Rules of Civil Procedure](#). Applications for approval to be added to the list shall be presented to the presiding district judge.

**Texas District Court Tarrant County – Local Rule 3.40 – private service of process**

Tex. Dist. Ct. Tarrant Cty. LR 3.40 (2008)

Rule 3.40. Private Service of Process

(a) For purposes of supervision and discipline the court deems those persons authorized to serve citation and other notices by order pursuant to [Rule 103, Texas Rules of Civil Procedure](#) to be officers of the court. Any such person filing a false return or engaging in service contrary to law or rule may be subject to punishment by an order of contempt. Such order may prohibit such person from serving citations and notices in Tarrant County.

(b) Any proposed order authorizing private service under Rule 103 will not be signed by the judge unless accompanied by a certificate signed by counsel requesting such an appointment. Such certificate shall set out the name and address of the person to be so authorized and affirm that such person is not less than eighteen (18) years of age, is not a party, and has no interest in the outcome of the suit in which the authorization is sought.

**Texas District Court Walker County – Local Rule 3.3 – service of process**

Tex. Dist. Ct. Walker Cty. LR 3.3 (2008)

Rule 3.3. Service of Process

The Courts have adopted a blanket order permitting private service of process pursuant to [Rule 103 of the Texas Rules of Civil Procedure](#). Applications for approval to be added to the list shall be presented to the local administrative judge. A list of approved private process servers is maintained in the District Clerk's Office.

## UTAH PROCESS SERVER REQUIREMENTS

Utah does not restrict the service of process. Utah Rule of Civil Procedure 4(d)(1) provides as follows:

Personal service. The summons and complaint may be served in any state or judicial district of the United States by the sheriff or constable or by the deputy of either, by a United States Marshal or by the marshal's deputy, or *by any other person 18 years of age or older at the time of service and not a party to the action or a party's attorney*. If the person to be served refuses to accept a copy of the process, service shall be sufficient if the person serving the same shall state the name of the process and offer to deliver a copy thereof.

In addition, Utah does not have education or training requirements for private process servers.

### **Applicable appended provisions:**

- Utah Code Ann. § 78B-8-302 – process servers
- Utah Code Ann. § 78B-8-303 – recoverable rates
- Utah Code Ann. § 78B-8-304 – violations of service of process authority



Utah Code Ann. § 78B-8-302 (2008)

§ 78B-8-302. Process servers

(1) Complaints, summonses, and subpoenas may be served by any person 18 years of age or older at the time of service, and who is not a party to the action or a party's attorney.

(2) The following persons may serve all process issued by the courts of this state:

(a) a peace officer employed by any political subdivision of the state acting within the scope and jurisdiction of his employment;

(b) a sheriff or appointed deputy sheriff employed by any county of the state;

(c) a constable, or the constable's deputy, serving in compliance with applicable law; and

(d) an investigator employed by the state and authorized by law to serve civil process.

(3) Private investigators licensed in accordance with Title 53, Chapter 9, Private Investigator Regulation Act, may only serve the following forms of process:

(a) petitions;

(b) complaints;

(c) summonses;

(d) supplemental orders;

(e) orders to show cause;

(f) notices;

(g) small claims affidavits;

(h) small claims orders;

(i) writs of garnishment;

(j) garnishee orders; and

(k) subpoenas duces tecum.

(4) Other persons may serve process as prescribed by Subsection (1).

(5) A person serving process shall legibly document the date and time of service and his name and address on the return of service.

Utah Code Ann. § 78B-8-303 (2008)

§ 78B-8-303. Recoverable rates

If the rates charged by private process servers exceed the rates established by law for service of process by persons under Subsection 78B-8-302 (1), the excess charge may be recovered as costs of an action only if the court determines the service and charge were justifiable under the circumstances.

Utah Code Ann. § 78B-8-304 (2008)

§ 78B-8-304. Violations of service of process authority

- (1) It is a class A misdemeanor for a person serving process to falsify a return of service.
- (2) It is a class C misdemeanor for a person to bill falsely for process service

## **VERMONT PROCESS SERVER REQUIREMENTS**

Vermont Rule of Civil Procedure 4(c) provides that service of all process shall be made by a sheriff, deputy sheriff, by a constable or other person specifically appointed for the purpose. Although any superior judge or judge of the court may specifically appoint an indifferent person to serve process, the general practice appears to be for sheriffs to serve process.

Vermont does not require any special training or education for private process servers. Education regarding how to effectively serve process is part of the law enforcement training sheriffs receive. Each sheriff's department determines what kind of training this involves.

### **Appended materials:**

- Vermont Rule of Civil Procedure 3 – Pleadings; Service of Pleadings
- Vermont Rule of Civil Procedure 4(c) – Process; By Whom Served

**Vermont Rule of Civil Procedure 3 – Pleadings; Service of Pleadings**

## RULES OF SMALL CLAIMS PROCEDURE

### V.R.C.P Rule 3 (2009)

Review Court Orders which may amend this rule.

#### Rule 3. Pleadings; Service of Pleadings.

(a) Pleading by plaintiff. To bring a small claims action, the plaintiff must file with the court clerk, on a complaint form provided by the court clerk, information identifying the plaintiff and the defendant and a concise statement of the nature and amount of the claim. If any document is attached to the complaint, the plaintiff must supply the court clerk with a copy for the defendant. The court clerk will assign a docket number to the claim and sign the summons to the defendant.

(b) Service of complaint on the defendant. The court clerk will send the summons and complaint with forms for acknowledging receipt of them, and a form for answering the complaint, to the defendant by first class mail at the address provided by the plaintiff. The defendant must sign the acknowledgment of receipt of the summons and complaint and file this acknowledgment with the court clerk within 20 days from the date of mailing by the court clerk. If the acknowledgment is not filed on time, the plaintiff will be notified by the court clerk and will need to have the summons and complaint, with a form for answering the complaint, served by a sheriff (or another person authorized to serve process) at the plaintiff's expense. Alternatively, if the defendant does not reside in the state, the plaintiff will need to have the summons and complaint, with a form for answering the complaint, served pursuant to Rule 4(e) of the Vermont Rules of Civil Procedure at the plaintiff's expense. The return of service from the process server must be filed by the plaintiff with the court clerk within 30 days from the mailing by the court clerk to the plaintiff of notice of the need for service by a process server; this time limit may be extended by the court if an extension is requested in writing by the plaintiff. The court may dismiss the plaintiff's claim if the return of service is not filed within the 30-day time limit, or within a longer time period if an extension is allowed by the court.

(c) Attachment; trustee process. Attachment and trustee process are not available prior to judgment.

(d) Pleading by defendant. If the defendant acknowledges receipt from the court clerk of a summons and complaint, or is served by a process server with a summons and complaint, the defendant then has 20 days in which to fill out and file with the court clerk an answer to the complaint. The court clerk will mail a copy of the answer to the plaintiff. The defendant may include in the answer any counterclaim that the defendant has against the plaintiff which arises from the same occurrence as the plaintiff's claim, but any judgment on a counterclaim may not exceed the limit for small claims. The required filing fee, as specified in a current schedule published by the Court Administrator, must be paid.

(e) Default by Defendant. If a defendant fails to file a timely answer with the court clerk, the court clerk will notify the plaintiff that he or she must file a motion for default judgment, with an

accompanying affidavit signed personally by the plaintiff or a person with personal knowledge of the facts in the affidavit, within 30 days from the date of the court clerk's notice. The court clerk will provide forms for the motion and affidavit. The court may dismiss the plaintiff's claim if the motion and affidavit are not filed on time.

(f) Service of default judgment. The court clerk will serve a default judgment on a defendant by first class mail and make a docket entry of such mailing. If the mailing to the defendant is returned to the court clerk because it was undeliverable, the plaintiff will be notified by the court clerk and given the opportunity to have the default judgment served on the defendant by a sheriff (or other person authorized to serve process) at the plaintiff's expense.

(g) Reopening a default judgment. A motion to reopen a default judgment is timely if filed in writing with the court clerk prior to or at the time of the first financial disclosure hearing relating to the default judgment. If no motion for a financial disclosure hearing has been filed, a motion to reopen a default judgment must be filed in writing with the court clerk no later than 90 days after entry of a default judgment, unless the judgment debtor proves to the court that he or she did not have notice of the default judgment. The required fee for filing a motion, as specified in a current schedule published by the Court Administrator, must be paid. A default judgment will not be reopened unless good cause is shown.



**Vermont Rule of Civil Procedure 4(c) – Process; By Whom Served**

## RULES OF CIVIL PROCEDURE

### II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

#### V.R.C.P. Rule 4 (2009)

Review Court Orders which may amend this rule.

#### Rule 4. Process.

(a) **Summons: Issuance.** The summons shall be filled out by the plaintiff's attorney as provided in subdivision (b) of this rule. The plaintiff's attorney shall deliver to the person who is to make service the original summons or a copy upon which to make a return of service and a copy of the summons and of the complaint for service upon the defendant.

(b) **Same: Form.** The summons shall be signed by the plaintiff's attorney, or, if the plaintiff has no attorney, by any Superior Judge or a judge or the clerk of the court to which it is returnable. It shall contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, and the time within which these rules require the defendant to appear and defend, and shall notify defendant that in case of the defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

**(c) By Whom Served.** Service of all process shall be made by a sheriff or deputy sheriff, by a constable or other person authorized by law, or by some indifferent person specially appointed for that purpose by any superior judge, or a judge of the court to which it is returnable, except that process served under subdivision (f), or a notice and request sent pursuant to subdivision (1), of this rule may be deposited in the mail by plaintiff or plaintiff's attorney and a subpoena may be served as provided in Rule 45. Special appointments to serve process shall be made freely when substantial savings in travel fees will result.

32 V.S.A. § 1591 (2009)

§ 1591. Sheriffs and other officers

There shall be paid to sheriffs' departments and constables in civil causes and to sheriffs, deputy sheriffs and constables for the transportation and care of prisoners, juveniles and mental patients the following fees:

(1) Civil process:

(A) For serving each process, the fees shall be as follows:

- (i) \$ 10.00 for each reading or copy wherein the officer is directed to make an arrest;
- (ii) \$ 50.00 upon presentation of each return of service for the service of papers relating to divorce, annulments, separations, or support complaints;
- (iii) \$ 50.00 upon presentation of each return of service for the service of papers relating to civil suits except as provided in subdivisions (1)(A)(ii) and (1)(A)(vii) of this title;
- (iv) \$ 50.00 upon presentation of each return of service for the service of a subpoena and shall be limited to that one fee for each return of service;
- (v) For each arrest \$ 15.00;
- (vi) For taking bail \$ 15.00;
- (vii) On levy of execution or order of foreclosure: for each mile of actual travel in making a demand, sale or adjournment, the rate allowed state employees under the terms of the prevailing contract between the state and the Vermont State Employees' Association, Inc.; for making demand, \$ 15.00 for posting notices, \$ 15.00 each, and the rate per mile allowed state employees under the terms of the prevailing contract between the state and the Vermont State Employees' Association, Inc. for each mile of necessary travel; for notice of continuance, \$ 15.00;
- (viii) For sale on each execution, or order of foreclosure amounting to \$ 350.00, or under, ten percent thereof, with a minimum fee of \$ 35.00 and up to an additional two percent on amounts exceeding \$ 350.00; for each deed of land sold on execution or order of foreclosure, \$ 100.00; for return on execution or report of sale on foreclosure, \$ 15.00, and the additional amount required to be paid the town clerk; be allowed reasonable attorneys' fees of drawing the deed of sale to the purchaser and for drawing the Vermont property tax return form connected therewith, and shall be allowed the fees and recording costs in connection with the procuring and

recording of any necessary certified copies, orders, certificates and reports of sale connected with the execution or foreclosure sales;

(ix) For securing property attached on mesne process, a sheriff or other officer shall be allowed a reasonable sum as fees, subject to the provision and allowance of the court.

(B) For each mile of actual travel in the necessary performance of duty in civil matters, the rate allowed state employees under the terms of the prevailing contract between the state and the Vermont State Employees Association, Inc.

(C) All civil process to be served by a sheriff or deputy sheriff shall be directed to their respective sheriff's department for service. The sheriff shall assign civil process to personnel within the department to ensure that process is completed in a timely and orderly manner. All payments for service of civil process shall be made to the sheriff's department. A sheriff or deputy sheriff shall not be entitled to fees paid for service of process nor shall a sheriff receive fees or payment in lieu of fees for civil process, except payment for actual and necessary expenses. A sheriff may appoint deputy sheriffs and establish compensation for service of civil process.

(D) The executive director of the department of state's attorneys shall develop a uniform reporting system to reflect:

- (i) Civil process received by a sheriff's department;
- (ii) Payments made to a sheriff's department for service including fees and reimbursements;
- (iii) Payments made by the sheriff's department to deputy sheriffs for serving process;
- (iv) Disbursements for other necessary expenses.

(E) Quarterly, 15 percent of the gross civil process fees received by a sheriff's department during that quarter shall be forwarded to the state treasurer for deposit in the state's general fund.

(2) For the transportation and care of prisoners, juveniles and mental patients:

(A) For necessary assistance in arresting or transporting prisoners, juveniles or persons with mental illness the sum of \$ 15.40 per hour for each deputy sheriff or assistant so required if the sheriff or constable makes oath that the deputy sheriff, assistant, or assistants were required giving the name of the assistant or assistants if there were more than one; provided, however, a full-time law enforcement officer shall not receive compensation under this subsection if otherwise compensated for the hours during which such transportation is performed. In addition to the rate established in this section, the sheriffs' department shall be reimbursed for the costs of the employers' contribution to Social Security and workers' compensation insurance attributable to services provided under this section. Reimbursement shall be calculated on an hourly basis; the sheriff's department shall also be reimbursed for the costs of employer contributions for

unemployment compensation, when a claim is filed and the percentage owed from the sheriff's department to the state can be accounted for under this section;

(B) For board and keeping, such sum as is actually expended shall be allowed for each prisoner when in charge of an officer who cannot reasonably place the prisoner in a jail or lockup for safekeeping;

(C) For each mile of actual travel, for transporting prisoners, juveniles and mental patients:

(i) five cents more per mile than the rate allowed state employees under the terms of the prevailing contract between the state and the Vermont State Employees Association, Inc.; or

(ii) twenty cents more per mile than the rate allowed state employees under the terms of the prevailing contract between the state and the Vermont State Employees Association, Inc. when four or more prisoners, juveniles, or mental health clients are transported in a single vehicle designed to carry six or more passengers in addition to the driver.

(D) The amount actually awarded by the claims commission established under section 931 et seq. of this title in a small claims proceeding pursuant to chapter 187 of Title 12 for which the law enforcement personnel or agency have not otherwise been compensated from insurance or other source for damages caused to a law enforcement agency's vehicle or to a law enforcement officer's personal vehicle by a prisoner, juvenile or mental patient while being transported by the officer in the performance of the officer's duty.

12 V.S.A. § 691 (2009)

§ 691. Service of civil or criminal process

Sheriffs and constables may serve either civil or criminal process, anywhere within the state and returnable to any court.

24 V.S.A. § 293 (2009)

§ 293. Duties

A sheriff so commissioned and sworn shall serve and execute lawful writs, warrants and processes directed to him, according to the precept thereof, and do all other things pertaining to the office of sheriff.

## **VIRGINIA PROCESS SERVER REQUIREMENTS**

Virginia does not restrict civil service of process to law enforcement personnel. Under Virginia law, the following persons are authorized to serve process:

A. The following persons are authorized to serve process:

1. The sheriff within such territorial bounds as described in [§ 8.01-295](#); or

2. Any person of age 18 years or older and who is not a party or otherwise interested in the subject matter in controversy. However, in any case in which custody or visitation of a minor child or children is at issue and a summons is issued for the attendance and testimony of a teacher or other school personnel who is not a party to the proceeding, if such summons is served on school property, it shall be served only by a sheriff or his deputy.

Va. Code Ann. § 8.01-293(A)(1) & (2).

### **Appended applicable provision:**

- Va. Code Ann. § 8.01-293



Va. Code Ann. § 8.01-293 (2009)

§ 8.01-293. Authorization to serve process, capias or show cause order; execute writ of possession and levy upon property

A. The following persons are authorized to serve process:

1. The sheriff within such territorial bounds as described in [§ 8.01-295](#); or

2. Any person of age 18 years or older and who is not a party or otherwise interested in the subject matter in controversy. However, in any case in which custody or visitation of a minor child or children is at issue and a summons is issued for the attendance and testimony of a teacher or other school personnel who is not a party to the proceeding, if such summons is served on school property, it shall be served only by a sheriff or his deputy.

Whenever in this Code the term "officer" or "sheriff" is used to refer to persons authorized to make, return or do any other act relating to service of process, such term shall be deemed to refer to any person authorized by this section to serve process.

B. Notwithstanding any other provision of law (i) only a sheriff or high constable may execute an order or writ of possession for personal, real or mixed property, including an order or writ of possession arising out of an action in unlawful entry and detainer or ejectment; (ii) any sheriff, high constable or law-enforcement officer as defined in [§ 9.1-101 of the Code of Virginia](#) may serve any capias or show cause order; and (iii) only a sheriff, the high constable for the City of Norfolk or Virginia Beach or a treasurer may levy upon property.

## WASHINGTON PROCESS SERVER REQUIREMENTS

Washington State does not restrict service of process in civil actions. For example, the Washington Superior Court Civil Rule 4 provides as follows:

(c) *By whom served* Service of summons and process, except when service is by publication, shall be by the sheriff of the county wherein the service is made, or by his deputy, *or by any person over 18 years of age who is competent to be a witness in the action, other than a party.* Subpoenas may be served as provided in rule 45.

We did not find any provisions pertaining to private process server education or training.

### **Appended applicable provision:**

- Washington Superior Court Civil Rule 4
- Wash. Rev. Code Ann. § 12.04.060 – Process – Service by constable or sheriff
- Wash. Rev. Code Ann. § 12.04.070 – Warrant officer – Position created – Authority – Service of criminal and civil process – Jurisdiction – Costs
- Wash. Rev. Code Ann. § 12.04.080 – Process – Service by person appointed by justice – Return – Exceptions
- Wash. Rev. Code Ann. § 12.04.090 – Service of process when sheriff disqualified

Rule 4. Process

(c) *By whom served* Service of summons and process, except when service is by publication, shall be by the sheriff of the county wherein the service is made, or by his deputy, or by any person over 18 years of age who is competent to be a witness in the action, other than a party. Subpoenas may be served as provided in rule 45.

§ 12.04.060. Process -- Service by constable or sheriff

All process in actions and proceedings in justice courts, having a salaried constable, when served by an officer, shall be served by such constable or by the sheriff of the county or his duly appointed deputy; and all fees for such service shall be paid into the county treasury.

§ 12.04.080. Process -- Service by person appointed by justice -- Return -- Exceptions

Any justice may, by appointment in writing, authorize any person other than the parties to the proceeding, or action, to serve any subpoena, summons, or notice and complaint issued by such justice; and any such person making such service shall return on such process or paper, in writing, the time and manner of service, and shall sign his name to such return, and be entitled to like fees for making such service as a sheriff or constable, and shall indorse his fees for service thereon: PROVIDED, It shall not be lawful for any justice to issue process or papers to any person but a regularly qualified sheriff or constable, in any precinct where such officers reside, unless from sickness or some other cause said sheriff or constable is not able to serve the same: PROVIDED FURTHER, That it shall be lawful for notice and complaint or summons in a civil action in the justice court to be served by any person eighteen years of age or over and not a party to the action in which the summons or notice and complaint shall be issued without previous appointment by the justice.

§ 35.20.270. Warrant officer -- Position created -- Authority -- Service of criminal and civil process -- Jurisdiction -- Costs

(1) The position of warrant officer is hereby created and shall be maintained by the city within the city police department. The number and qualifications of warrant officers shall be fixed by ordinance, and their compensation shall be paid by the city.

(2) Warrant officers shall be vested only with the special authority to make arrests authorized by warrants and other arrests as are authorized by ordinance.

(3) All criminal and civil process issuing out of courts created under this title shall be directed to the chief of police of the city served by the court and/or to the sheriff of the county in which the court is held and/or the warrant officers and be by them executed according to law in any county of this state.

(4) No process of courts created under this title shall be executed outside the corporate limits of the city served by the court unless the person authorized by the process first contacts the applicable law enforcement agency in whose jurisdiction the process is to be served.

(5) Upon a defendant being arrested in another city or county the cost of arresting or serving process thereon shall be borne by the court issuing the process including the cost of returning the defendant from any county of the state to the city.

(6) Warrant officers shall not be entitled to death, disability, or retirement benefits pursuant to chapter 41.26 RCW on the basis of service as a warrant officer as described in this section.

§ 36.28.090. Service of process when sheriff disqualified

When there is no sheriff of a county, or he is disqualified from any cause from discharging any particular duty, it shall be lawful for the officer or person commanding or desiring the discharge of that duty to appoint some suitable person, a citizen of the county, to execute the same:

PROVIDED, That final process shall in no case be executed by any person other than the legally authorized officer; or in case he is disqualified, some suitable person appointed by the court, or judge thereof, out of which the process issues, who shall make such appointment in writing; and before such appointment shall take effect, the person appointed shall give security to the party interested for the faithful performance of his duties, which bond of suretyship shall be in writing, approved by the court or judge appointing him, and be placed on file with the papers in the case.

## WEST VIRGINIA PROCESS SERVER REQUIREMENTS

West Virginia does not restrict civil service of process. West Virginia Rule of Civil Procedure 4 provides as follows:

**(c) Service with complaint; by whom made.**

(1) A summons shall be served together with a copy of the complaint. The plaintiff is responsible for directing the clerk in the manner of service of the summons and complaint within the time allowed under subdivision (k).

(2) Service may be effected by any person who is not a party and who is at least 18 years of age.

(3) At the request of the plaintiff and upon payment of the applicable fees and costs of service, the clerk shall:

(A) Deliver the summons and complaint to the sheriff for service as directed by the plaintiff; or

(B) Make service by either certified mail or by the first class mail as directed by plaintiff; or

(C) Forward a copy of the summons and complaint to the Secretary of State, as statutory attorney-in-fact, for service as specified by any applicable statute.

(emphasis added).

West Virginia does not have any other requirements of private civil process servers.

**Applicable appended provision:**

- West Virginia Rule of Civil Procedure 4



**Rule 4. Summons.**

**(a) Form.**

The summons shall be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff. It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. The court may allow a summons to be amended.

**(b) Issuance.**

Upon the filing of the complaint, the clerk shall forthwith issue a summons to be served as directed by the plaintiff. A summons, or a copy of the summons if addressed to multiple defendants, shall be issued for each defendant to be served.

**(c) Service with complaint; by whom made.**

(1) A summons shall be served together with a copy of the complaint. The plaintiff is responsible for directing the clerk in the manner of service of the summons and complaint within the time allowed under subdivision (k).

(2) Service may be effected by any person who is not a party and who is at least 18 years of age.

(3) At the request of the plaintiff and upon payment of the applicable fees and costs of service, the clerk shall:

(A) Deliver the summons and complaint to the sheriff for service as directed by the plaintiff; or

(B) Make service by either certified mail or by the first class mail as directed by plaintiff; or

(C) Forward a copy of the summons and complaint to the Secretary of State, as statutory attorney-in-fact, for service as specified by any applicable statute.

**(d) Manner of service.**

Personal or substituted service shall be made in the following manner:

**(1) Individuals.**

Service upon an individual other than an infant, incompetent person, or convict may be made

by:

- (A) Delivering a copy of the summons and complaint to the individual personally; or
- (B) Delivering a copy of the summons and complaint at the individual's dwelling place or usual place of abode to a member of the individual's family who is above the age of sixteen (16) years and by advising such person of the purport of the summons and complaint; or
- (C) Delivering a copy of the summons and complaint to an agent or attorney-in-fact authorized by appointment or statute to receive or accept service of the summons and complaint in the individual's behalf; or
- (D) The clerk sending a copy of the summons and complaint to the individual to be served by certified mail, return receipt requested, and delivery restricted to the addressee; or
- (E) The clerk sending a copy of the summons and complaint by first class mail, postage prepaid, to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 14 and a return envelope, postage prepaid, addressed to the clerk.

The plaintiff shall furnish the person making service with such copies of the complaint or order as are necessary and shall advance the costs of service. For service by certified mail, the plaintiff shall pay to the clerk a fee of twenty dollars for each complaint to be served. For service by first class mail, the plaintiff shall pay to the clerk a fee of five dollars for each complaint to be served.

Service pursuant to subdivision (d)(1)(D) shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a return envelope showing refusal of the registered or certified mail by the defendant. If delivery of the summons and complaint pursuant to subdivision (d)(1)(D) is refused, the clerk, promptly upon receipt of the notice of such refusal, shall mail to the defendant, by first class mail, postage prepaid, a copy of the summons and complaint and a notice that despite such refusal, the case will proceed and that judgment by default will be rendered against the defendant unless the defendant appears to defend the suit. Any such default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by or delivery was refused by an unauthorized person. The notice and acknowledgment of receipt of the summons and complaint pursuant to subdivision (d)(1)(E) shall be executed in the manner prescribed on Form 14. Unless good cause is shown for failure to complete and return the notice and acknowledgment of receipt of summons and complaint pursuant to subdivision (d)(1)(E) within twenty (20) days after mailing, the court may order the payment of cost of personal service by the person served. Service pursuant to subdivision (d)(1)(E) shall not be the basis for entry of default or a judgment by default unless the record contains a notice and acknowledgment of receipt of the summons and complaint. If no acknowledgment of service pursuant to subdivision (d)(1)(E) is received by the clerk within twenty (20) days after the date of mailing, service of such summons and complaint shall be made under subdivisions (d)(1)(A), (B), (C), or (D).

**(2) Infants and incompetents under 14 years.**

Upon an infant or incompetent younger than 14 years of age, by delivering a copy of the summons and complaint to the infant's or incompetent's guardian or conservator resident in the State; or, if there be no such guardian or conservator, then to either the infant's or incompetent's father or mother if they be found. If there is no such guardian or conservator and if the father or mother cannot be found, service of the summons and complaint shall be made upon a guardian ad litem appointed under Rule 17(c). But if any of the persons upon whom service is directed to be made by this paragraph is a plaintiff, then service shall be upon the person who stands first in the order named in this paragraph who is not a plaintiff.

**(3) Infants and incompetents 14 years or older.**

Upon an infant or incompetent 14 years of age or older, by making service as provided in paragraph (2) above, and in addition by making service upon the infant or incompetent as provided in paragraph (1) above.

**(4) Convicts.**

Upon a person confined in the penitentiary of this or any other state, or of the United States, by delivering a copy of the summons and complaint to that person's committee, guardian, or like fiduciary resident in the State; or, if there be no such committee, guardian, or like fiduciary, or if the committee, guardian, or like fiduciary is a plaintiff, service of process shall be made upon a guardian ad litem appointed under Rule 17(c).

**(5) Domestic private corporations.**

Upon a domestic private corporation,

(A) by delivering or mailing in accordance with paragraph (1) above a copy of the summons and complaint to an officer, director, or trustee thereof; or, if no such officer, director, or trustee be found, by delivering a copy thereof to any agent of the corporation including, in the case of a railroad company, a depot or station agent in the actual employment of the company; but excluding, in the case of an insurance company, a local or soliciting agent; or

(B) by delivering or mailing in accordance with paragraph (1) above a copy thereof to any agent or attorney in fact authorized by appointment or by statute to receive or accept service in its behalf.

**(6) Domestic public corporations.**

(A) Upon a city, town, or village, by delivering or mailing in accordance with paragraph (1) above a copy of the summons and complaint to its mayor, city manager, recorder, clerk, treasurer, or any member of its council or board of commissioners;

(B) Upon a county commission of any county or other tribunal created to transact county

business, by delivering or mailing in accordance with paragraph (1) above a copy of the summons and complaint to any commissioner or the clerk thereof or, if they be absent, to the prosecuting attorney of the county;

(C) Upon a board of education, by delivering or mailing in accordance with paragraph (1) above a copy of the summons and complaint to the president or any member thereof or, if they be absent, to the prosecuting attorney of the county;

(D) Upon any other domestic public corporation, (i) by delivering or mailing in accordance with paragraph (1) above a copy of the summons and complaint to any officer, director, or governor thereof, or (ii) by delivering or mailing in accordance with paragraph (1) above a copy thereof to an agent or attorney in fact authorized by appointment or by statute to receive or accept service in its behalf.

**(7) Foreign corporations and business trusts qualified to do business.**

Upon a foreign corporation, including a business trust, which has qualified to do business in the State, by delivering or mailing in accordance with paragraph (1) above a copy of the summons and complaint as provided in Rule 4(d)(5).

**(8) Foreign corporations and business trusts not qualified to do business.**

Upon a foreign corporation, including a business trust, which has not qualified to do business in the State,

(A) by delivering or mailing in accordance with paragraph (1) above a copy of the summons and complaint to any officer, director, trustee, or agent of such corporation; or

(B) by delivering or mailing in accordance with paragraph (1) above copies thereof to any agent or attorney in fact authorized by appointment or by statute to receive or accept service in its behalf.

**(9) Unincorporated associations.**

Upon an unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to any officer, director, or governor thereof, or by delivering or mailing in accordance with paragraph (1) above a copy of the summons and complaint to any agent or attorney in fact authorized by appointment or by statute to receive or accept service in its behalf; or, if no such officer, director, governor, or appointed or statutory agent or attorney in fact be found, then by delivering or mailing in accordance with paragraph (1) above a copy of the summons and complaint to any member of such association and publishing notice of the pendency of such action once a week for two successive weeks in the newspaper of general circulation in the county wherein such action is pending. Proof of publication of such notice is made by filing the publisher's certificate of publication with the court.

**(e) Constructive service.**

**(1) Service by publication.**

If the plaintiff shall file with the court an affidavit:

(A) That the defendant is a foreign corporation or business trust for which no officer, director, trustee, agent, or appointed or statutory agent or attorney in fact is found in the State upon whom service may be had; or

(B) That the defendant is a nonresident of the State for whom no agent, or appointed or statutory agent or attorney in fact is found in the State upon whom service may be had; or

(C) That the plaintiff has used due diligence to ascertain the residence or whereabouts of the defendant, without effect; or

(D) That process, delivered to the sheriff of the county in which the defendant resides or is, has twice been delivered to such officer and has been returned without being executed; or

(E) That there are or may be persons, other than those named in the complaint as plaintiff and defendant, interested in the subject matter of the action, whose names are unknown to the plaintiff and who are made defendants by the general description of unknown defendants;

then clerk shall enter an order of publication against such named and unknown defendants. Every order of publication shall state the title of the action; the object thereof; the name and address of the plaintiff's attorney, if any; that a copy of the complaint may be obtained from the clerk; and that each named and unknown defendant must appear and defend on or before a date set forth in the order, which shall be not fewer than 30 days after the first publication thereof; otherwise, that judgment by default will be rendered against the defendants at any time thereafter. Every such order of publication shall be published once a week for two successive weeks (or for such period as may be prescribed by statute, whichever period is longer) in a newspaper of general circulation in the county wherein such action is pending. Proof of service by publication is made by filing the publisher's certificate of publication with the court.

**(2) Service by mailing.**

When plaintiff knows the residence of a defendant upon whom service has been unsuccessfully attempted as described in Rule 4(e)(1)(D), or when plaintiff knows the residence of a nonresident defendant or the principal office of a nonresident defendant foreign corporation or business trust for which no officer, director, trustee, agent, or appointed or statutory agent or attorney in fact is found in the State upon whom service may be had, plaintiff shall obtain constructive service of the summons and complaint upon such defendant by the method set forth in Rule for (d)(1)(D). The summons in such instance shall notify the defendant that the defendant must appear and defend within thirty days of the date of mailing pursuant to Rule 4(d)(1)(D); otherwise, that judgment by default will be rendered against the defendant at any time thereafter. However, service pursuant to Rule 4(d)(1)(D) shall not be the basis for the entry of a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a return

envelope showing refusal of the certified mail by the defendant. If delivery of the summons and complaint sent by the certified mail is refused, the clerk, promptly upon notice of such refusal, shall mail to the defendant, first class mail, postage prepaid, a copy of the summons and complaint and a notice that despite such refusal the case will proceed and that judgment by default will be rendered against defendant unless defendant appears to defend the suit. If plaintiff is unable to obtain service of the summons and complaint upon such defendant by use of the method set forth in Rule 4(d)(1)(D), then, upon affidavit to such effect filed with the court, the clerk shall issue an order of publication, and the procedures described in subdivision (e)(1) shall be followed to effectuate constructive service.

**(f) Personal service outside State.**

Personal service of a copy of the summons and complaint may be made outside of this State on any defendant. If any such defendant be then a resident of this State and if the plaintiff shall during the pendency of the action file with the court an affidavit setting forth facts showing that the defendant is such a resident, such service shall have the same effect as personal service within this State and within the county of the defendant's residence; otherwise, such service shall have the same effect as constructive service. In either case, the summons shall notify the defendant that the defendant must appear and defend within 30 days after service, otherwise judgment by default will be rendered against the defendant at any time thereafter.

**(g) Summons; service thereof in addition to constructive service.**

The plaintiff may, at any time before judgment, have a copy of the summons and complaint served on a defendant in the manner provided by subdivisions (d) or (f) of this rule, although constructive service under subdivision (e) of this rule has been made. After such service under subdivision (d) of this rule, the action shall proceed as in other cases of personal or substituted service within the State; and after such service under subdivision (f) of this rule, the action shall proceed as in other cases of personal or constructive service.

**(h) Process part of record.**

Summonses, complaints, proofs of service and returns endorsed thereon, all orders and notices served or published, all proofs of service and certificates of publication, and all other papers filed relating to such process, orders, and notices, are a part of the record of an action for all purposes.

**(i) Proof of service or publication.**

The person serving the process or order or publishing a notice or order shall make proof of service or publication to the court promptly and in any event within the time during which the person served must respond to the process, notice, or order. If service is made by a person other than the sheriff or clerk, that person shall make proof thereof by affidavit. Failure to make proof of service or publication within the time required does not affect the validity of the service of the process, notice, or order.

**(j) Amendment.**

At any time in its discretion and upon such terms as it deems just, the court may allow any process, notice, or order, or proof of service or publication thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process, notice, or order issued or was entered.

**(k) Time limit for service.**

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effective within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

## **WISCONSIN PROCESS SERVER REQUIREMENTS**

Wisconsin does not restrict the service of process in civil actions. Wisconsin law provides as follows:

**(1) WHO MAY SERVE.**

An authenticated copy of the summons may be served by any adult resident of the state where service is made who is not a party to the action. Service shall be made with reasonable diligence.

**(1m) SERVICE BY CERTAIN NONRESIDENTS.**

Notwithstanding sub. (1), an adult who is not a party to the action and who resides in Illinois, Iowa, Michigan, or Minnesota may serve an authenticated copy of the summons in this state.

Wis. Stat. § 801.10(1) & (1m) (summons; by whom served).

Wisconsin does not have education or training requirements for private process servers.

**Applicable appended provision:**

- Wisconsin Stat. § 801.10



Wis. Stat. § 801.10 (2008)

801.10. Summons, by whom served.

(1) WHO MAY SERVE.

An authenticated copy of the summons may be served by any adult resident of the state where service is made who is not a party to the action. Service shall be made with reasonable diligence.

(1m) SERVICE BY CERTAIN NONRESIDENTS.

Notwithstanding sub. (1), an adult who is not a party to the action and who resides in Illinois, Iowa, Michigan, or Minnesota may serve an authenticated copy of the summons in this state.

(2) ENDORSEMENT.

At the time of service, the person who serves a copy of the summons shall sign the summons and shall indicate thereon the time and date, place and manner of service and upon whom service was made. If the server is a sheriff or deputy sheriff, the server's official title shall be stated. Failure to make the endorsement shall not invalidate a service but the server shall not collect fees for the service.

(3) PROOF OF SERVICE.

The person making service shall make and deliver proof of service to the person on whose behalf service was made who shall promptly file such proof of service. Failure to make, deliver, or file proof of service shall not affect the validity of the service.

(4) PROOF IF SERVICE CHALLENGED.

If the defendant appears in the action and challenges the service of summons upon the defendant, proof of service shall be as follows:

(a) Personal or substituted personal service shall be proved by the affidavit of the server indicating the time and date, place and manner of service; that the server is an adult resident of the state of service or, if service is made in this state, an adult resident of this state or of Illinois, Iowa, Michigan, or Minnesota and is not a party to the action; that the server knew the person served to be the defendant named in the summons; and that the server delivered to and left with the defendant an authenticated copy of the summons. If the defendant is not personally served, the server shall state in the affidavit when, where and with whom the copy was left, and shall state such facts as show reasonable diligence in attempting to effect personal service on the defendant. If the copy of the summons is served by a sheriff or deputy sheriff of the county in this state where the defendant was found, proof may be by the sheriff's or deputy's certificate of service indicating time and date, place, manner of service and, if the defendant is not personally served, the information required in the preceding sentence. The affidavit or certificate

constituting proof of service under this paragraph may be made on an authenticated copy of the summons or as a separate document.

(b) Service by publication shall be proved by the affidavit of the publisher or printer, or the foreman or principal clerk, stating that the summons was published and specifying the date of each insertion, and by an affidavit of mailing of an authenticated copy of the summons, with the complaint or notice of the object of the action, as the case may require, made by the person who mailed the same.

(c) The written admission of the defendant, whose signature or the subscription of whose name to such admission shall be presumptive evidence of genuineness. Judicial Council Committees Note, 1979: Sub. (2) is amended to clarify that the individual who serves the summons on behalf of the plaintiff under the procedures in the Wisconsin Rules of Civil Procedure must indicate on the copy of the summons served both the time and date of service. There is presently a lack of uniformity of interpretation in Wisconsin of the term "time" in 801.10 (2). Some jurisdictions interpret it to include time and date of service while other jurisdictions interpret it as only the date of service. Clarifying that both the time and date of service must be indicated in the serving of the summons will insure that this potentially valuable information is noted on the served copy of every

## WYOMING PROCESS SERVER REQUIREMENTS

Wyoming does not restrict the service of process in civil actions. Wyoming Rule of Civil Procedure 4 provides as follows:

(c) By whom served. -- Except as otherwise ordered by the court, process may be served:

(1) Within the state, by any person of the age of majority, not a party to the action, or, at the request of the party causing same to be issued, by the sheriff of the county where the service is made, or the sheriff's designee;

Wyo. R. Civ. P. 4(c).

Wyoming does not have education or training requirements for private process servers.

### **Applicable appended provision:**

- Wyoming Rule of Civil Procedure 4

WYOMING RULES OF CIVIL PROCEDURE  
II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS  
AND ORDERS

Wyo. R. Civ. Proc. Rule 4 (2008)

Review Court Orders which may amend this Rule

Rule 4. Process.

(a) Issuance of summons. -- Upon the filing of the complaint the clerk shall forthwith issue a summons to the plaintiff for service on the defendant. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

(b) Form of summons. -- The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of the defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

**(c) By whom served. -- Except as otherwise ordered by the court, process may be served:**

**(1) Within the state, by any person of the age of majority, not a party to the action, or, at the request of the party causing same to be issued, by the sheriff of the county where the service is made, or the sheriff's designee;**

(2) In another state or United States territory, by any person of the age of majority, not a party to the action, or, at the request of the party causing same to be issued, by the sheriff of the county where the service is made, or sheriff's designee, or by a United States marshal or marshal's designee;

(3) In a foreign country, by any citizen of the United States of the age of majority appointed for such purpose by the clerk;

(4) In the event service is made by a person other than an officer, the amount of costs assessed therefor, if any, against any adverse party shall be within the discretion of the court.