

# **INSTRUCTIONS: HOW TO SERVE NOTICE AS REQUIRED BY LAW**

“Service” means giving legally required notice to other parties that you have filed papers asking for a court order that may affect them. The court papers can **ONLY** be delivered in a manner permitted by law, and proof of proper delivery must be filed with the court.

- By completing the steps for service, you tell the court that the other parties have received a copy of the papers you have filed, that they have notice of what you have told the court and of what you are asking the court to do (to order).
- After the other parties are served, they are allowed a period of time to file a “Response” or “Answer” if they want to inform the court that they disagree with what you said or with what you asked the court to order. The Response or Answer tells you and the court what the other party wants.
- Your case will not proceed until the court is satisfied all parties have received proper notice so that they may act to protect their rights.
- The rules differ slightly for serving papers on persons within the state; outside the state; as well as for serving papers in family law matters and in other type cases.
- If you are unable to locate a party, you may still be able to serve notice by publication, that is by running a legal notice advertisement IF you can satisfy the court that you have taken all proper and reasonable steps to TRY to locate and have the papers personally served on the missing party before resorting to publication (Note that you may not be able to establish child support or get certain other court orders when serving notice by publication).
- If the papers are not served properly:
  - ▶ your case may be delayed;
  - ▶ you may have to re-serve the papers or re-publish the notice;
  - ▶ you may incur additional costs;
  - ▶ any court order granted may be declared invalid, revoked, or overturned.

Court rules concerning “SERVICE” are contained in the Arizona rules of Family Law Procedure (A.R.F.L.P.), Rule 40-43, or the ARIZONA RULES of CIVIL PROCEDURE (A.R.C.P.), Rule 4 (for most non-family law matters).

### **FREQUENTLY ASKED QUESTION (FAQ):**

Can I (or a friend or relative) just go hand him or her the papers?

**ANSWER: ONLY** if the party is willing to sign an “ACCEPTANCE OF SERVICE” form in front of a Notary or Court Clerk, stating that they received all required documents, and return that form for you to file with the court, or file it with the court themselves.

**METHODS OF SERVICE:** Make sure that you are using the correct method for your situation.

## **1. WHEN YOU KNOW WHERE THE OTHER PARTY LIVES IN THE UNITED STATES.**

- A. SERVICE by ACCEPTANCE.** This method requires you to give, or mail, the court papers to the other party and include an **“Acceptance of Service”** form. The other party must sign the **“Acceptance of Service”** form in front of a Notary Public, or Clerk of the Superior Court in Arizona, and return it to you to file or file it with the court him or herself.

**WARNING:** Do **not** use this method of service if you are the victim of domestic violence, or believe the other party may become violent or uncooperative when you ask him/her to accept service. Do not use this method of service if you believe the other party may attempt to harm you or your child(ren) or to take your money or your child(ren).

The other party cannot sign the **“Acceptance of Service”** until after you have filed the papers with the court. The other party’s signature on the **“Acceptance of Service”** does **not** mean that he/she agrees with the court papers. It only means that the other party admits receiving the papers without being served in person by the sheriff or a process server.

Service is complete at the time the other party signs the “Acceptance of Service.” If you choose this method of service, see the “Procedures: How to Serve the Other Party by “Acceptance of Service” document. **COSTS:** There are no court fees or costs for serving papers by this method.

- B. SERVICE BY MAIL OR DELIVERY SERVICE WITH SIGNATURE CONFIRMATION.**

This method requires you to send the court papers to the other party by mail (or for Family Court matters only, by mail or commercial delivery service) and for the other party **AND NO ONE ELSE** to sign for the receipt of the package containing the documents, and for you to file a copy of the proof of mailing and the receiving party’s signature.

For civil or other non-family court matters, you may serve by “certified” or other forms of U.S. mail requiring a signed and returned receipt, but only on parties **out-of-state**. (A.R.C.P. Rule 4.2(c))

For FAMILY COURT matters ONLY: you may serve papers in-state or out-of-state (within the U.S.) by either U.S. mail or by a nationwide commercial delivery service such as FedEx or UPS, that provides confirmation of delivery by either a signed paper receipt or by electronic means such as by a printout from the internet, by fax, or by email so long as it includes a copy of the signature of receipt. (A.R.F.L.P Rules 41-42)

Service is complete at the time the other party signs for receipt of the package containing the court papers. If you choose this method of service, see the **“Instructions: How to Serve Family Court Papers by Mail or Delivery Service with Signature Confirmation”** document.

**COSTS:** There are no court fees or costs for serving papers by this method. Cost of mailing, as of January 12, 2010, depending on weight of package and delivery options chosen, is estimated at between \$8.00 and \$15.00.

- C. SERVICE BY PRIVATE PROCESS SERVER (also known as a “Registered” or a “Certified” process server).** This method requires you to hire and pay a certified process server to serve the other party with court papers.

**Process Servers:**

- Are not court or government employees but are authorized to act as “officers of the court” to deliver court papers to the other party at home, work, or other locations, and to file proof of delivery with the court.

- Do not necessarily have to obtain the signature of the party receiving the court papers.
- May offer greater flexibility in serving papers “after-hours” or on short notice.
- Are paid directly by you, not through the court.

Service is complete at the time the process server delivers the court papers to the other party. You may locate process servers in the commercial section of the phone book under “PROCESS SERVER”, or at the web site of the Arizona Process Server’s Association at <http://arizonaprocessservers.org/>.

If you choose this method of service, see the **“Instructions: How to Serve Court Papers by Registered Process Server.”** If papers are served by a process server or sheriff outside the state of Arizona, you must submit the “Affidavit Supporting Out of State Service,” before you can apply for a default court order, (A.R.C.P. 4.2(b), or A.R.F.L.P. 42 (B)).

**COSTS:** Private process servers set their own fees. Fees vary. Ask and compare.

- D. SERVICE BY SHERIFF.** This method requires you to contact the Sheriff’s Office in the county where the other party lives (or is incarcerated) to arrange for a Sheriff’s deputy to give the other party the court papers.

Service is complete at the time the sheriff or deputy hands the other party the court papers. If you choose this method of service, see **“Instructions: How to Serve Court Papers by Sheriff.”** *If having the papers served by a sheriff outside the state of Arizona, you must submit the “Affidavit Supporting Out of State Service” before you can apply for a default court order. (A.R.C.P. 4.2(b), or A.R.F.L.P. 42 (B)).* The sheriff will file a “Certificate of Service” with the Court.

**COSTS:** This method requires you to pay a fee to the Sheriff's Office. Fees vary.

## 2. WHEN YOU CANNOT FIND THE OTHER PARTY.

- A. SERVICE BY PUBLICATION.** This method requires that you run a legal notice advertisement for a set number of times over a set period of time in what the law refers to as a “newspaper of general circulation.”

**You may use this method only if you do not know where the other party lives, or cannot find the other party.** Service by publication is your “last resort.” It is used **only** if you do not have a current address for the other party and have tried, unsuccessfully, to find the other party.

Service by Publication can be expensive and may delay your court case. You must have court approval for “Service By Publication.”

To use this method, see the **“Instructions: “How to Serve the Court Papers by Publication.”**

**COSTS:** Each publication sets its own fees. Fees vary. Ask and compare.

- B. ALTERNATIVE SERVICE.** If none of the methods listed above work for your situation because the person to be served is hiding or otherwise is difficult to serve papers on, you may file a “Motion for Alternative Service” to ask for the court’s permission to serve notice by other means. A lawyer can advise as to what alternatives are available and write up or advise you how to write up the motion.

## 3. SERVING PAPERS IN SPECIAL CIRCUMSTANCES.

- A. SERVING NOTICE ON PRISONERS:** An inmate may be served by “Acceptance of Service” if he or she has access to a Notary and is willing to sign and return the **Acceptance** form to you (see **1A** regarding “**Service by Acceptance**”) Otherwise inmates must be served by sheriff of the county where jailed (see **1D** regarding “**Service by Sheriff**”).
- B. SERVING NOTICE ON THE STATE:** If the State of Arizona is a party to the case, notice must also be served on the Office of the Attorney General of Arizona.

The State of Arizona may be a party to the case because:

- You have a law suit against the state, or
- This is a matter affecting child support and either party used the services of the state in establishing or collecting child support or received public benefits for the child(ren).

In matters affecting child support in which the state is a party, the Attorney General’s Division of Child Support Services (DCSS) will sign an “Acceptance of Service” and return the form for you to file with the court. There are no court costs or fees for serving by this method.

### WHEN IS A WRITTEN RESPONSE TO THE COURT PAPERS DUE?

**Note:** This time table only applies when a “**Summons**” has been issued and served. If the court has set a hearing date and an “**Order to Appear**” has been issued and served, the parties must appear at the hearing and it is not always necessary to file a written response.

- **LOOK AT THE TIMETABLE BELOW.** If the **last day** for the other party to respond falls on a Saturday, Sunday, or legal holiday, you **do not** count that day. The last day you count to determine if you can file the default papers, must be a day when this court is open for business.
- **INCLUDE WEEKENDS AND HOLIDAYS.** In counting the days, include weekends and holidays until you reach the number of days in the Timetable below. If the other party files a written response with the court, you **CANNOT GO BY DEFAULT**.

#### DEFAULT TIMETABLE

SERVICE BY	COUNT	EVENT
“ <b>Acceptance of Service</b> ” (in Arizona)	20 days	after other party signs “ <b>Acceptance of Service</b> ”
Process Server (in Arizona)	20 days	after other party receives papers from process server
Sheriff (in Arizona)	20 days	after other party receives papers from sheriff
“ <b>Acceptance of Service</b> ” (out of State)	30 days	after other party signs “ <b>Acceptance of Service</b> ”
Registered mail (out of State)	30 days	after other party signs green card
Process Server (out of State)	30 days	after other party receives papers from process server
Sheriff (out of State)	30 days	after other party receives papers from sheriff
Publication	60 days	after the 1 <sup>st</sup> day of publication
	90 days	after the 1 <sup>st</sup> day of publication if for divorce, legal separation or annulment