

Pre-Judgment: Basic Steps to Small Claims Service

“Service” or “service of process” are the legal terms used to describe the act of giving notice of a lawsuit or court hearing to another party. There are several different methods and very specific time limits by which you must have the other party served. The type of service you are required to use depends on the type of forms you are filing. If you do not have the other party served properly (within the correct time limits and using the correct method), the court cannot hear or decide your case.

Notice: This packet describes only the most common methods of service available for use. Please seek legal assistance if you would like to explore additional/alternative methods or the forms you are filing are not listed.

Any forms mentioned in this basic guide may be obtained from the Clerk of Court or online at <http://www.wicourts.gov/forms1/circuit.htm>.

| Court Self-Help Form | Required Type of Service | Service Time Limits |
|---|--|---|
| Summons and Complaint Small Claims - Claim Under Dollar Limit/Replevin (SC-500i) | Mail if allowed by court rule and defendant(s) reside in the county where complaint is filed/or personal | Not less than 8 business days before the return date, but no longer than 90 calendar days from the date the action was filed. |
| Summons and Complaint Small Claims Eviction (SC-500i) | Personal Post and mail | Not less than 5 business days before the return date, but no longer 90 calendar days from the date the action was filed. Post a copy at least 7 business days prior to the return date, and mail a copy at least 5 business days prior to the return date. |
| Summons and Complaint Small Claims Arbitration Award/ Return of Earnest Money (SC-500i) | Mail if allowed by court rule and defendant(s) reside in the county where complaint is filed/or personal | Not less than 8 business days before the return date, but no longer than 90 calendar days from the date the action was filed. |
| Petition to Answer or Reopen (SC-511) (never received mailed summons and complaint) | Mail | Not less than 8 business days before the hearing date. |
| Motion to Reopen (SC-515) (good cause shown for not answering or appearing) | Mail | Not less than 8 business days before the motion date. |
| Demand for Trial and Instructions (SC-517) | Mail | Within 10 calendar days of the oral decision or within 15 calendar days of the written decision. |
| Motion and Order for Hearing on Contempt (SC-507) (SC-507) | Personal | Not less than 5 business days before the date of the hearing. |

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| Subpoena and Certificate of Appearance (GF-126) | Personal | No specific statutory time limit; it is recommended you attempt service far enough in advance to assure the appearance of any witnesses. |
| Non-Earnings Garnishment (SC-503) | Personal | Not less than 8 business days before the return date. You must serve both the garnishee and the debtor. |
| Earnings Garnishment (CV-422), Exemption Notice - Earnings Garnishment (CV-423), Earnings Garnishment - Debtor's Answer (CV-424), Garnishment Exemption Worksheet (CV-426), Poverty Guidelines for Earnings (CV-427) | Mail | Debtor must be served within 7 business days after the date of service on the garnishee and at least 3 business days before the payday. |
| Motions filed for reasons other than those listed above (no specific court self-help forms). | Mail | Not less than 8 business days before the motion date. |

WARNING: Copies, NOT original documents, should only be given to the other party. The originals (if in your possession) and proof of service need to be returned to court after the other party has been served.

Service

There are **five** basic ways to have the other party served:

1. Private Process Server

You may make arrangements with a **private process server** to have the other party personally served. Contact individual companies for fees and procedural information. To find a private process server in your or the other party's area, you may look under "Process Service" using a phone or internet directory or by going to <http://www.iprocessservers.com>. Proof of service and a set of the documents which were served must be returned to court as soon as possible. Proof of service is what you get back from the process server and may be called Affidavit of Service, Certificate of Service, or Proof of Service. Remember to keep a copy for your records.

2. Sheriff's Department

The **Sheriff's Department** in the county in which the individual to be served resides may serve the other party. Proof of service and a set of the documents which were served must be returned to court as soon as possible. Proof of service is what you get back from the sheriff and may be called Affidavit of Service, Certificate of Service, or Proof of Service. Remember to keep a copy for your records.

3. Service by Another Person

Any other person who is age 18 or over, is a resident of Wisconsin, Illinois, Iowa, Michigan, or Minnesota, and is not a party to the action, can also serve the other party.

You: complete the caption of the Affidavit of Service form (SC-5100V or SC-5110V or SC-5120V).

- Other person:** The person serving the paperwork signs his or her name (for example, on the back or in any blank space) on the document(s) being served. That person must also indicate the time, date, place, manner of service, and upon whom service is being made and then gives the document(s) to the party being served.
- Other person:** Completes the bottom portion of the Affidavit of Service.
- Other person:** Signs it under oath in the presence of a **notary public**.
- You:** return the Affidavit of Service form and a set of the documents served, as soon as possible to the Clerk of Courts. Remember to keep a copy for your records.

4. Posting and Mailing in Eviction Actions

In eviction actions where the defendant cannot be personally served after reasonable diligence:

- You:** complete the caption of the Affidavit of Service form (SC-5100V).
- The Sheriff's Department, a private process server, or another person:** post a copy of the summons and complaint onto some part of the premises where it may be conveniently read at least 7 business days prior to the return date.

AND

- You, the Sheriff's Department, a private process server, or another person:** mail a copy of the summons and complaint at least 5 business days prior to the return date, to the defendant at the last known address, even if it is the premises which are the subject of the action.
- The Sheriff's Department, a private process server, or another person:** Completes the bottom portion of the Affidavit of Service (SC-5100V).

LAST RESORT

Before attempting this last resort, you should consider seeking legal assistance. There are specific and complicated rules that must be followed to successfully serve a party by publication.

5. Service by Publication

Service by Publication is a **last resort** and can **only** be used if you failed to have the other party served by one of the methods above. You have a responsibility to make every effort to make personal service if possible, which includes gathering reasonably available information from family and friends to try and determine the other party's location.

The option of **Service by Publication** is only available to you if you can answer yes to **all** of the following:

- You have tried personal service through the Sheriff's Department, a private process server, or another person.

- You have given the Sheriff's Department, the private process server, or the other person as much information as possible to help them find the other party.
- The Sheriff's Department, private process server, or another person cannot find the other party after a diligent search.
- You have been given an **Affidavit of Due Diligence/Not Found/Attempted Service** by the Sheriff's Department, private process server, or the other person stating that the other party could not be found. Keep this affidavit.

Procedural Checklist

1. Prepare a cover letter like the following example.

[Date]

Defendant's Name
Last Known Address
City, State ZIP

RE: Case Title [Name of Plaintiff vs. Name of Defendant]
Case No.: Court Case Number [07SC123]

Dear [Defendant's Name]:

Enclosed please find a Publication Summons and a Summons and Complaint which I have filed in the _____ County Circuit Court.

Sincerely,

Your name

2. Make a copy of the cover letter for your records.
3. Mail to the defendant at his/her last known address the original cover letter and a copy of the Publication Summons and the Summons and Complaint. (If the mailing is returned to you, keep it for your court hearing.)
4. Complete the Affidavit of Mailing (SC-5130V).
5. Complete the Publication Summons (SC-5160V).
6. Take the Publication Summons to the newspaper in the municipality where the defendant currently lives, or where his/her last known address is located. There will be a fee, which cannot be waived by the court. The Publication Summons must be **published one time in the newspaper** and is considered served on the first day of publication.

Note: There are official newspapers in many municipalities, but generally you can use any newspaper regularly published at least once a week in the city, village, or town where the defendant lives, or you think he/she may live.

7. The Newspaper will provide you with a document as proof of the publication and an invoice.
8. Take the following documents to the Court, as soon as possible or on the next court date (follow local court rules) and keep a copy for your records.
- Affidavit of Due Diligence/Not Found/Attempted Service provided by the Sheriff's Department or private process server.(If not done already)
 - Your cover letter
 - Affidavit of Mailing or certified/registered mail receipt
 - Proof of the Service by Publication from the newspaper
 - Copy of the invoice from the newspaper

Service by Mail

Serving documents on the other party by mail is allowed for certain types of forms. If service by mail is allowed, you must:

- Mail copies of the documents to the other party.
- Sign a sworn affidavit called the Affidavit of Mailing (SC-5130V) in the presence of a Notary Public.
- Return the Affidavit of Mailing (SC-5130V) and a set of the documents that were mailed to the Court as soon as possible. Remember to keep a copy for your records.