



HOW TO SERVE (DELIVER) LEGAL PAPERS IN OREGON

The person who files a legal matter must make sure that notice of the case is “served” (or delivered to) the other side. “Service” is how the other side knows:

- What the filing party is asking the Court to order
- What the served party must do, and by when, if the served party disagrees with what is being requested. *See Question #1.*

Service must be done in the way that the law sets out. The law covers how and when service can be done, by whom, and how “proof” of service is filed with the Court afterward. Without proper notice of a lawsuit, a case usually cannot proceed. The case could even be dismissed.

These instructions tell you how to serve legal papers in Oregon. They cover:

- Who can serve legal papers
- How legal papers are served
- What must be done after the papers are served
- Where to ask for help if you have questions about serving papers

“Legal papers” in this booklet means the paperwork that **STARTS A LAWSUIT** (and in family law matters, a modification proceeding). Oregon Rule of Civil Procedure 7 sets out what the law requires.

Once a lawsuit is already underway, different (and less formal) rules apply to delivery of most documents. Oregon Rules of Civil Procedure 9 covers those situations. These instructions do not apply then.

TERMS USED IN THIS BOOKLET: See page 10 for definitions.

QUESTIONS ANSWERED IN THIS BOOKLET:

1. **What does “service” of legal papers mean?**
2. **Can the person filing the lawsuit serve the other party?**
3. **Who can serve legal papers?**
4. **How do I know what papers have to be served on the other party?**
5. **Can I serve the other party first, and then file my lawsuit?**
6. **What is a “Summons?”**
7. **Who are the Petitioner and the Respondent (or the Plaintiff and the Defendant)?**

8. How is the other party served?
9. Can't the other party just "accept" service?
10. What if the Respondent won't accept service?
11. How is Personal Service done?
12. What is Substitute Service?
13. What is Office Service?
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15. Can't I just serve the other side by eMail or Facebook?
16. What is Alternative Service?
17. What is Service by Posting?
18. What is Service by Publication?
19. What if the Defendant/Respondent is in jail or prison?
20. What if the Defendant/Respondent lives in another country?
21. How do I prove that the Defendant/Respondent has been served?
22. Is there a deadline for filing the Proof of Service with the court?
23. What if I have questions about serving legal papers?

1. What does "service" of legal papers mean?

"Service" of legal papers means delivery of legal papers in a way that the law accepts. Lawsuits have important consequences, so the party being sued must be notified of the lawsuit and have information about how and when to object. The person serving the papers must file a document with the court stating how, when, and where the service happened and what papers were delivered to the party who was served. This document is called a "Proof of Service." It tells the court that the other party did receive notice and *could* have objected, if the served party does not file an answer or objection by the deadline.

The rules for service can be technical. It is important to do the service process correctly or your case might be postponed or even dismissed. Follow instructions and get help if you have questions. *See page 10 for getting help on answering questions about service.*

2. Can the person filing the lawsuit serve the other party?

No. The person serving the papers cannot be connected to the lawsuit. But the person filing the lawsuit can prepare the papers for someone else (the server) to deliver. See *Question #4*.



3. Who can serve legal papers?



Anyone who is:

- At least 18 years old,
- Lives in the state where the papers will be delivered, and
- Is not a party to the lawsuit (or a party's attorney or employee)

can serve the legal papers.

A deputy sheriff in the county where the other party can be located will serve the papers for a fee. The Court may waive or defer (postpone) this fee if the service will be done in Oregon. You can also pay a “process server,” who is someone who works for a private company that delivers papers as a business. The Court cannot waive or defer a fee charged by a private company. If the situation is safe, you may have a friend or someone else serve the papers for you at no cost, but only if this person meets the qualifications listed above.

4. How do I know what papers have to be served on the other party?



The party who filed the lawsuit should prepare the documents for the server. Often, there is a “Summons” that must be served. See #6, “What is a Summons?” To start a lawsuit, there should also be a “Complaint.” (In family law matters, the Complaint is called a “Petition”). The original Complaint/Petition is filed with the Court. The served party gets a true (accurate) copy. The Complaint (or Petition) tells the served party what the filing party wants. It could be a Complaint about money owed, and therefore a money judgment is asked for, or it could be a Petition for Dissolution (Divorce) or Child Custody, or something else.

There are many types of lawsuits. There may also be other legal documents such as “motions,” “affidavits,” “declarations,” “notices,” “temporary orders,” or “Orders to Show Cause” to be served. Check at your local court to make sure you have the documents required to be served on the other party for your type of case.

5. Can I serve the other party first, and then file my lawsuit?

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No. The Complaint or Petition must be filed *before* the other party can be served. Do not send papers out to be served until the original documents have been filed with the Court.

6. What is a “Summons?”



A Summons is the document that tells the other party that a lawsuit has been filed. It states what county the suit is pending in, how long the served party has to respond, how to respond, and what the deadline for responding is. The deadline is usually 30 days. A Summons also states the phone number and web address for the Oregon State Bar Lawyer Referral Service. These resources are a place to start looking for legal help if the party who is served does not have an attorney or know how to get legal advice.

In family law cases, there may not be a Summons if the legal case is a modification of a judgment. If the person filing is asking to change a judgment that was already entered in a court, there will likely be only a Motion, a Declaration or Affidavit, and an Order to Show Cause (OSC). But the Order to Show Cause should tell the served party that he or she has 30 days to file a Response, or state a date and time to appear in court.

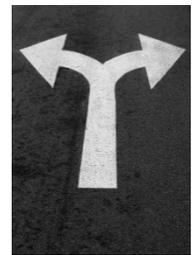
7. Who are the Petitioner and the Respondent (or the Plaintiff and the Defendant)?

The parties in each lawsuit have a role or title. The person (or company) that files the lawsuit is called the “Plaintiff” or “Petitioner.” The person (or company) that is being sued is called the “Defendant” or “Respondent.”

The parties keep their original titles throughout the case. For example, in a family law case, modification motions and other matters are often filed *after* the Judgment to deal with the changed circumstances of the children or the parties. Even if the requesting party at this later point is the Defendant/Respondent, he or she will keep that same title instead of becoming the “Plaintiff/Petitioner.”

8. How is the other party served?

The law recognizes several ways to serve the other party. These are discussed below, in questions # 9 –19.* It is important to follow the rules about service carefully or delivery of the paperwork may have to be re-done. Re-doing service could delay finalizing the lawsuit because it means a new 30-day period to wait for an answer (or response) has to occur. *See #6 above.* In some situations, improper service could mean your case is dismissed and you would have to re-file and start over.



* These rules may not be effective for service outside the United States. *See Question #20.*

9. Can't the other party just “accept” service?

Yes. If the other party is willing to accept service, the filing party may simply mail or hand-deliver a copy of the Summons, petition/complaint, and other documents to the Defendant / Respondent, along with a form called an “Acceptance of Service.” In family law matters, the Acceptance of Service form is available on the Oregon Judicial Department website. (Each family law packet has an “Acceptance” form for use with that packet). *See web addresses at the end of this document.*

An “Acceptance of Service” signed by the Respondent (or Defendant) does not show that the Respondent agrees with what was requested in the legal papers. Signing the Acceptance of Service means only that the party receiving the legal papers agrees he or she has received them. Not all Defendants/Respondents are willing to accept service voluntarily. Often, only individuals who want something similar to what the filing party wants (such as a divorce) will agree to “accept service.”

The Respondent/Defendant who is willing to accept service must fill out the Acceptance of Service form and sign it. Sometimes the form requires notarization (signing it in front of a notary public) or a declaration under penalty of perjury that the person signing is actually the Respondent/Defendant. The Respondent / Defendant can then either file the Acceptance of Service form with the court, or return it to the Petitioner/Plaintiff for filing. Either way, the Acceptance of Service must be filed with the court to show that the other side has notice of the lawsuit.



10. What if the Respondent won't accept service?

If the respondent won't accept service, another method of service must be used. No matter which method you use, proof of service must be filed with the court.

11. How is Personal Service done?



Personal service means that the person doing the service hands the papers to the respondent, face to face. This is the preferred method for serving an individual. The serving party will need to note the date, time, and place of service so he or she can fill out this information on the "proof of service." The server also needs to know that the person he or she served is the party named in the lawsuit.

As long as the server personally handed the legal papers to the Defendant / Respondent, service is complete even if the served party then dropped them, ripped them up, refused to take them, or threw them back at the server. Service is complete as long as the served party knew he or she was being handed legal papers. It may be best for the server to say "These are legal papers I am handing to you" so that there is no doubt about what happened.

Personal service can occur at any place, at any time, that both the server and the served party are present.

12. What is Substitute Service?

Substitute service means that the person doing the service:

- 1) goes to the Defendant's/Respondent's current home,
- 2) personally hands the Summons, Petition, and other documents to someone who (1) lives in the Defendant/Respondent's home and (2) is at least 14 years old and,
- 3) mails another copy of the Summons and other legal papers to the Defendant/ Respondent at his or her home address by regular first class mail. This mailing must include a written statement that tells the served party when and with whom the server left the documents that were personally delivered.



Service done by "Substitute Service" is not legally complete until proof is filed with the court stating that the in-person delivery to someone at the home and the mailed notice were both done. The served party's response time starts to run the day after the mailing is done.

IMPORTANT NOTE: If the sheriff's office did service for you, you will likely receive a copy of their Proof of Service in the mail. Read that document carefully. If the deputy states that he or she handed the papers to someone living in the household (and didn't give the papers directly the other

party), the sheriff's office has done only steps 1 and 2 above. You must make sure step 3 is done by having a friend or someone you know do the mailing, and then have this person sign a document saying when the mailing was done. Proof of this mailing must also be filed with the court.

Forms for all parts of Substitute Service in family law matters are available online at the court's website. *See Resources on page 10.*

13. What is Office Service?

The server can use this method only if the Defendant/Respondent is the one maintaining the office to conduct business. Although the law is not clear on this point, it is likely that the served party must be the employer. If the Defendant/Respondent is only an employee, office service cannot be used. In office service, the person serving the papers:



- 1) goes to the office,
- 2) hands the papers to a person who appears to be in charge of the office, and
- 3) mails a copy of the papers to the Defendant/Respondent's home address by regular first class mail. The server must include in this mailing a written statement telling the served party when and with whom the server left the documents that were personally delivered to the office.

When service is done by "Office Service," the notice is not legally complete until proof is filed that the delivery and the mailing were both done. The served party's response time starts to run the day after the mailing is done.

IMPORTANT NOTE: If the sheriff's office did service for you, you will likely receive a copy of their Proof of Service in the mail. Read that document carefully. If the deputy states that he or she handed the papers to someone working in the office (and didn't give the papers directly the other party), the sheriff's office has done only steps 1 and 2 above. You must make sure step 3 is done by having a friend or someone you know do the mailing and then have that person sign a document saying when the mailing was done. Proof of this mailing must also be filed with the court.

14. How is Service by Mail done?

To serve the respondent by mail, the person serving the papers must

- mail the Summons, complaint/petition, and other documents to the Defendant's/Respondent's home or mailing address by certified mail, registered mail, or express mail *with a return receipt requested* and
- mail an additional copy of the papers to the Defendant's/Respondent's home address by regular first- class mail.



Service by mail of a Summons and Complaint/Petition (or a modification matter in a family law case) is not effective *unless the served party signs the receipt*. If anyone else signs (such as the Defendant's/Respondent's roommate or spouse or relative), service has not been completed. The green receipt card containing the signature of the Defendant / Respondent must be filed with the court, along with proof of service that the first-class mailing was done.

The response time for a party served by mail starts running from which happens *first*:

- the date after the return receipt was signed
- the fourth day after the mailing to an Oregon address
- the eighth day after mailing to an address outside of Oregon

A filing party can sometimes serve by mail legal documents *other than* those that start the lawsuit. In this situation, first-class mail without a return receipt is allowed. But the mailing party must still file proof that he or she mailed the documents to the other party. Knowing which documents start a law suit and which ones do not can be complicated. Furthermore, certain matters (such as contempt) require personal service even if a lawsuit is already pending between the parties. See #11 above. It is best to get legal help about serving legal papers by mail. Resources are listed at the end of this document.



15. Can't I just serve the other side by eMail or Facebook?

No. The law recognizes only certain ways to give notice. Even if you feel the best way to make sure the other side knows about the lawsuit is to let him know through email or Facebook, you need court approval first for "Alternative Service" for this method to be effective under the law. See #16.

16. What is Alternative Service?

If the Defendant/Respondent won't accept service and none of the four ways described in #11-14 above have worked or can work, you may still be able to serve the papers by using "Alternative Service." To proceed this way, you must have the permission of a Judge *in advance*. The Court will need to decide what methods are the means (or combination of means) most likely to assure that the Defendant/Respondent receives actual notice of the lawsuit. To get a court order approving Alternative Service, the filing party:



- must file a Motion for an Order Allowing Alternative Service and
- must provide a sworn statement (or declaration under penalty of perjury) explaining why the papers setting out how you have tried every other method of service but cannot get the papers served. This statement must set out why those methods weren't successful, and list whom you contacted to try to locate the Defendant/Respondent (family members, former roommates, employers, or co-workers) and what their responses were about the

Defendant/Respondent's whereabouts. Be sure your sworn statement is filled out completely and

- must prepare a proposed Order for the Judge to sign.
- may also have to appear before a Judge to answer questions under oath about the efforts to find and serve the other party.

As Alternative Service, the Court may allow you to “post” a notice on a bulletin board in a courthouse or another public place or to publish a notice in a newspaper. The Court might also require you to mail notices to family members, or to take a combination of steps, such as email, that appear likely to result in the Defendant/Respondent receiving notice of the lawsuit.

For family law cases, court forms are available on the court's website to ask for an Order Allowing Alternative Service. See *the Resources on page 10*.

17. What is Service by Posting?



Service by “posting” is a step approved by the Court that allows notice of the lawsuit to be posted on a bulletin board that contains public notices. Usually the Summons is posted but sometimes the Complaint/Petition may be posted as well. (Read what your order requires). The posting is usually ordered done in a courthouse in the county where you believe the Defendant/Respondent lives. The Court could instead (or in addition) order that you post the Summons and/or other legal documents in a public place where the Defendant/Respondent frequently goes, such as a particular treatment provider's office or even a gym.

Usually, no fee is charged for posting. Remember, though, that you need a court order allowing this method *before* posting. The Judge will decide the time period that the notice has to remain on the bulletin board. And the party who posted the notice will need to sign and file a form with the court setting out when he or she posted the notice and removed it. The person who posts the Summons cannot be the party who filed the lawsuit.

For family law cases, court forms are available on the court's website to ask for an Order Allowing Alternative Service. See *the Resources on page 10*.

18. What is Service by Publication?

Another method of Alternative Service is called service by publication. This method of service involves publishing a Summons in a generally-read newspaper in the county where the case is pending and/or in the locality where the Defendant/Respondent lives. The Judge will specify what newspaper should be used. Newspapers charge a fee for publishing this notice. To serve by publication, you need court approval first. See # 16 above. If the Court allows this method, you will need to make your own arrangements with the



newspaper to publish the Summons. Usually, the Summons is published once a week for four weeks.

When the publishing period is over, you will need to obtain an affidavit (sworn statement) from the newspaper staff person swearing that the Summons was published and for how long (on which dates). Many newspapers have forms they prepare themselves for this purpose. No matter who prepares the affidavit, it is the filing party's responsibility to make sure this proof of service is filed with the court.

For family law cases, court forms are available on the court's website to ask for an Order Allowing Alternative Service. *See the Resources at the end of this booklet*

19. What if the Defendant/Respondent is in jail or prison?



If the Defendant/Respondent in your case is in custody, the only methods of service likely to work are having a deputy sheriff or prison/jail employee serve the papers. You can contact the particular correctional facility to find out what the practice is there and what fee, if any applies. If service will be done by an Oregon deputy sheriff, your fee waiver or deferral from an Oregon judge should cover this step. Check with the facility to see if there is a charge if a correctional officer serves the papers.

If you are serving a Defendant/Respondent who is in jail or prison outside of Oregon or in a federal or tribal facility, you will need to contact the jail administration office or the sheriff in the county where the facility is located for information on how service can be done.

As in any situation, you will need to make sure that the person or deputy doing the service prepares a "proof of service" document setting out the details about service. Deputies often have their own form and may sometimes mail it to the court without notice to you. You may need to check court records, or back with the deputy, to find out if service was done and if proof of service was filed.

20. What if the Defendant/Respondent lives in another country?

Even if the Respondent is willing to accept service (see #9, above), this is a situation in which you will need to get an attorney's advice. Depending on the country, there could be extra or different steps required for service. It is best to get an attorney's help with this.



21. What if the Defendant/Respondent is in the military?



The ways to serve the Respondent are the same but (1) it may be difficult to locate the Respondent and (2) the Respondent is entitled to delay the case if he or she is on active duty or training or about to be deployed. This is another situation in which advice from an attorney is best.

22 How do I prove that the Defendant/Respondent has been served?



Deputy Sheriffs and private process servers often file the proof of service directly with the court. If a friend or family member did the service, the server will need to fill out a proof of service form. Either the server or the filing party can then file the proof of service with the court. The original summons must be attached. For most family law cases, proof of service forms are available from the court website. *See Resources at the end of this booklet.*

If you serve by publication, you have to prove that the newspaper actually published the Summons. Newspapers will usually give you an affidavit that says when they published the Summons, so you can file that with the court.

23 Is there a deadline for filing the Proof of Service with the court?

You should make sure the Proof of Service is filed as soon as possible. In some courts, if the Proof of Service has not been within 63 days after the lawsuit was filed, the court will send a notice to the filing party stating that the case will be dismissed if the Proof of Service is not filed within the next 28 days.



22. What if I have questions about serving legal papers?

It is very common for people to have questions about the legal system. If you need help with something or don't understand something, you can ask a clerk or facilitator at the courthouse, your county law librarian, or an attorney. Remember that only an attorney can give you legal advice. Some resources are set out below.



TERMS USED IN THIS BOOKLET

Defendant – the person who is sued in a non-family law case. In family law, this person is called the “Respondent.”

Petitioner – the person who starts a lawsuit in a family law matter by filing a petition. He or she is “petitioning” or asking the Court to order certain things. In civil law (most non-criminal cases other than family and probate matters), the person who starts the lawsuit is called the “Plaintiff.” After a General Judgment (final decision) has been reached in the original lawsuit, the Petitioner keeps his/her title for modification proceedings or any other legal matters.

Plaintiff – the person (or company) that starts a lawsuit in a non-family law case. In family law, this person is called the “Petitioner.”

Respondent – the person who is sued in a family law case. He or she is “responding” or answering to what the Petitioner has asked from the Court. After a General Judgment (final decision) has been reached in the original lawsuit, the Respondent keeps his/her title for modification proceedings or any other legal matters, even if the Respondent is the one making the request to the Court.

Service – the delivery of legal papers in a way that the law accepts.

Summons – the document that tells the served party that a lawsuit has been filed, how long the served party has to respond (usually 30 days), and that the filing party will ask for the relief in the legal papers if no objection or answer is filed by the deadline.

RESOURCES:

Oregon Judicial Department -- Family Law home page: <http://www.ojd.state.or.us/familylaw>

Oregon Judicial Department forms, including family law forms:
<http://courts.oregon.gov/ojd/forms/pages/index.aspx>

Oregon Judicial Department – Circuit Court home pages for each county:
<http://courts.oregon.gov/OJD/courts/circuit/pages/index.aspx>

Oregon State Bar Lawyer Referral Service information: <http://www.osbar.org/public/ris/>

Information on civil legal aid services: <http://oregonlawhelp.org/>

Some stationery stores carry fill-in-the-blank legal forms, including forms for proof of service.

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