

# How to serve someone by publication in Illinois©

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# Disclaimer — Please read

This packet of information was prepared to answer general questions and give general advice about the law in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer,

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Look for these symbols to tell you when to:



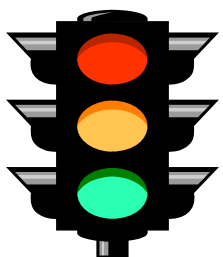
**STOP!**

You need legal representation or advice to continue.



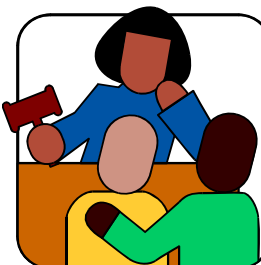
**USE CAUTION!**

This is very important so pay attention.



**GO!**

You can proceed to the next step.



**CHECK IT OUT!**

This issue is discussed in another packet.

# Warning to all readers



Before you proceed with using this packet, you should ask yourself the following questions:

## 1. Have I tried to consult a private attorney?

No self-help publication, packet, or form can replace the advice and experience of a licensed attorney. An attorney may not cost as much as you think, especially if you just need to ask questions. Before you proceed on your own, call several local attorneys, compare prices, and find out whether you can pay an attorney or not.

## 2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?

There are several agencies which provide legal assistance for free to certain groups of individuals. Some of these agencies are listed to the right. While they may not be able to help you with a particular problem, it does not hurt to call them to find out before you proceed on your own.

## 3. Is this something that I can do on my own?

If you have trouble following directions, or have difficulty reading, writing, or speaking in public, you may not be able to follow the directions and advice in this packet. If this is the case, find a friend or someone who can help you before you proceed on your own.

### Free sources of legal help

#### Land Of Lincoln Legal Assistance

Serves the 65 southernmost counties in Illinois

Toll Free: 877-342-7891

For additional information, you may visit their website at

[Http://www.lollaf.org](http://www.lollaf.org)

#### Prairie State Legal Services

Serves most of northern and north central Illinois outside of Cook County

815-965-2134

800-331-0617

#### Coordinated Advice and Referral Program for Legal Services

serving Cook County

312-738-9494

#### Will County Legal Assistance

Serving Will County

815-727-5123



It is very important that you read each section of this packet completely before you take any action in regard to a legal problem including using any forms that supplement this packet.

Because this packet discusses terms and actions you are likely not familiar with, you will need to refer back to the following sections from time to time when reading this packet:

## Who these people are

This section describes people that you may come into contact with in regard to a particular legal problem. It is important that you understand who these people are and what they do and don't do.

## What these legal terms mean

This section defines commonly used legal terms in words that you can understand. To use the rest of this packet and any supplemental forms, you need to understand exactly what these terms mean.

## Summary of the law in this area

This section contains summaries of important areas of the law that you need to know.

## How to file a document in a court file

This section answers commonly asked questions about filing documents.

## Myths and Tips

These two sections discuss commonly held misbeliefs about the law and steps that you should take (or not take) that could make your task easier.



# Who these people are



## Judge:

The judge is the person who presides over the courtroom. In most cases, the judge makes all of the final decisions and approves all agreements. The judge will decide whether or not you have served someone properly. When a judge makes a decision or a finding, it has the force of law. The judge also sets and enforces court rules (like dress codes) and in some courthouses, the judge decides when cases are scheduled.



## Circuit Clerk:

The Circuit Clerk is responsible for creating, managing, and updating court files. When you want to put something in a court file, see a court file, or make a copy of something in a court file, you talk to the Circuit Clerk's staff. The Circuit Clerk will issue (put his/her seal on) the Summons you use. In some courthouses, the Circuit Clerk also decides when cases are scheduled.



## Sheriff:

The Sheriff's main duty is to keep the peace and to enforce the law. His/her role in the legal system, however, is usually to "serve" (give notice) to people of pending or upcoming court cases or hearings. The sheriff does this by giving the person a notice called a "summons". The sheriff also enforces the judge's orders.



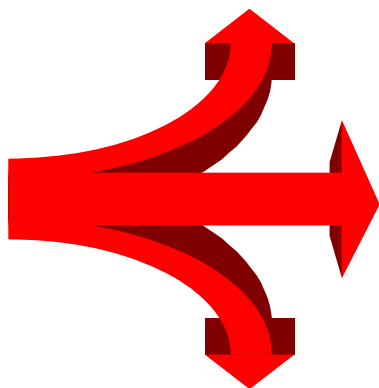
## Attorney:

An attorney is someone who can help you with your legal problem by providing you with advice about the law, the legal system, and the merits of your case. An attorney can act as your advocate and can represent you in court and in negotiation settlements.



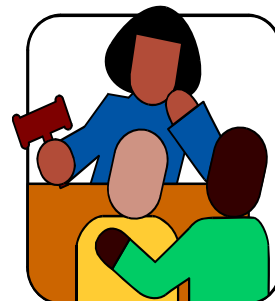
## Private Detective:

In counties of less than one million population, a person can be served by a private detective as well as a sheriff. You will have to pay a fee to the private detective to have service completed and a fee waiver by the court will not waive whatever fees a private detective may charge for service.



## Entry of Appearance, Waiver, and Consent

In certain cases, if the party you are trying to serve agrees with everything you are trying to do or are requesting the court to do, you may be able to have him/her sign an Entry of Appearance, Waiver and Consent form. This form can be found in other Self Help packets.



## Service by mail

In some cases, you can serve a party by mail. For instance, in Small Claims Court service by mail is permitted as long as the mail is sent certified, return receipt requested showing to whom it was delivered and the date of delivery. As a general rule, however, service by mail can only be used after a lawsuit has already been filed and only if the person files an affidavit stating that he/she has used service by mail.

## Service by a private detective

While you will still need to complete the steps as outlined in this packet, in counties with a population of less than one million people, a summons may be served by a private detective instead of a sheriff or deputy sheriff. The detective, however, must be licensed or registered as a private detective under the Illinois Private Detective Act of 1983.



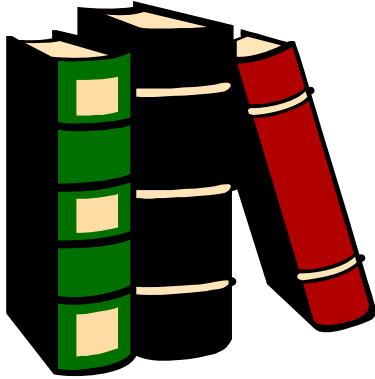
Please remember that with the exceptions as described in this packet, a person filing a lawsuit cannot serve a party themselves, but, rather, must use the sheriff or a private detective. Do not attempt to serve someone on your own, especially in person. Serving someone in person can be dangerous as you don't know how a person might react to being sued.



If you are starting a lawsuit, service is not only important, it is required. Service must be done in a certain way and certain forms are required to show proper service. This packet will show you what steps you need to take to serve someone in Illinois by publication.

If you plan to file additional documents in a lawsuit that has already been started, in most cases, you can serve the other party by mail. If you are uncertain as to whether this option is available to you, you should seek the advice of an attorney.

If you are the party who has been sued, you can serve the person who started the lawsuit by mail. In almost all cases, however, you will need to file your response to the lawsuit by a certain time and/or appear at a hearing or you will be held in default. In most cases, being held in default means that the party who initiated the lawsuit wins. This packet does not discuss how to file an answer to a lawsuit.



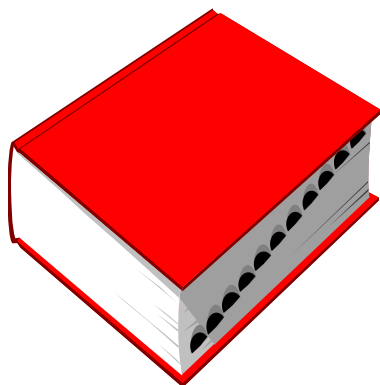
## Disclaimer: Please Read !!

The following is a list of publications which discuss the issues of service. Some of these publications are specific to Illinois and others are more general in nature. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to the accuracy of the content of these publications including whether they will achieve the result you desire. The School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet disclaim any responsibility for the consequences of any action taken in reliance upon the information in these publications. If you are concerned or do not understand whether a particular publication will be of assistance to you or will apply to your specific situation, you should talk to the publication's publisher or an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

Represent yourself in Court by Bergman and Bergman-Barrett (1997)

# What these legal words mean

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## **affidavit**

A sworn statement by a person. Lying in an affidavit can lead to a charge of perjury.

## **circuit**

The judicial system in Illinois is divided into circuits. Each circuit defines a geographic area in Illinois.

## **defendant**

A person who is sued.

## **issued or sealed summons**

Before a summons can be used by the sheriff or a private detective, it must be issued or sealed by the Circuit Clerk in the county where the lawsuit has been filed. "Issued" means that the Clerk has signed and dated the summons and placed his/her seal on the Summons.

## **jurisdiction**

Whether the court in a particular state has the power to hear a case or to order someone to do something depends upon whether it has "jurisdiction". Jurisdiction can be either over a person or over a subject. For a state court to have jurisdiction over a person, generally, the person must either reside in the state or have committed an act in the state.

## **motion**

A written or oral request to the judge after a lawsuit has been started (see petition).

## **petition**

A written request to the court. A petition usually starts a lawsuit and contains the facts that one person alleges has happened along with the relief that they are requesting from the court.

## **plaintiff or petitioner**

The person who starts a lawsuit.

## **pro-se**

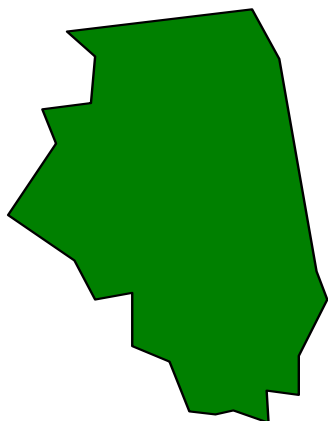
A person who is not represented by an attorney and is involved as a party in a lawsuit.

## **serve or service**

The process where a person is officially notified of a pending lawsuit.

## **statute**

The law that the state legislature or federal government enacted on a particular subject.



The laws which govern service in Illinois can be found in the Chapter 735 of the Illinois Compiled Statutes and the Supreme Court Rules.

Service means to officially notify someone of a lawsuit. Service is sometimes called "service of process". Service is usually completed when the person being served is given a form called a Summons. The Summons will either indicate the date of a hearing that the person served must attend or it will indicate a deadline by which the person being served must respond to the lawsuit. When a person cannot be found, in some cases service can be completed by a process called publication.

Service by publication is discussed in Section 5/2-206 of Chapter 735 of the Illinois Compiled Statutes. Publication differs from the normal service of process in that the person being "served" is never actually given notice in person either by a sheriff, private detective, or by mail. Rather, a notice is run in a local newspaper in the county where the lawsuit was filed which notifies the party that a lawsuit has been filed against him/her.

Service by publication can only be used when the person attempting service swears in an affidavit that the location of the person he/she is trying to serve cannot be determined despite their best efforts.

Service by publication cannot be used when serving someone with an Order To Show Cause as this must be done in person by Summons.

## **In-person service of individuals inside the State of Illinois**

Service by the sheriff of individuals inside the State of Illinois is used when the location of the person can be determined. For a discussion on how to serve someone inside the State of Illinois, consult Packet #1 of the Court series.



## **In-person service of individuals outside the State of Illinois**

Service by summons of individuals is used when the location of the person can be determined, but the person lives outside the State of Illinois. For a discussion on how to serve someone by the sheriff outside the State of Illinois, consult Packet #2 of the Court series.



## **Service of corporations**

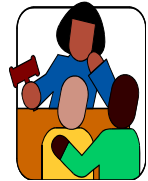
A private corporation may be served by publication, summons, or mail.



## Step One: Complete the Affidavit for Service by Publication

In the supplement to this packet you will find a form entitled Affidavit for Service by Publication. This form states that the person you are trying to serve cannot be found and that despite your best efforts, you cannot determine his/her residence, place of work, etc., so you can serve him/her by the Sheriff with a Summons.

If you have attempted service by the Sheriff, make sure that the Summons indicating that the person you are trying to serve could not be found is filed with the Clerk. For a discussion on how to serve someone inside the State of Illinois by the sheriff, see Packet #1 of the Court series. For a discussion on how to serve someone outside the State of Illinois by the sheriff, see Packet #2 of the Court series.



Remember that you are not supposed to serve someone by publication if you know where he/she could be found. Service by publication is only permitted in cases where a person's location cannot be determined. You cannot use publication to serve someone with an Order To Show Cause. After you have completed the Affidavit, file it with the Circuit Clerk in the county where your lawsuit was filed.



## Step Two: Complete the fee waiver motion (if you want to)

Running an notice in a newspaper costs money. If you are unable to pay these costs, and you have already filed an Application to Sue As A Poor Person which was approved by the Court, you can file a motion with the court to have the county pay the costs of your notice. In the supplement to this packet you will find a Motion to Waive Publication Costs and an Order Waiving Publication Costs. If you want to apply for a waiver of the publication costs, you will need to complete this Motion and give it along with the Order to the Circuit Clerk and ask him/her to present to a Judge for approval. When filing your documents, make sure that you have 3 copies of each document — one for the file, one for you, and one that you will mail to the newspaper or the party you are trying to serve.

If you do not have an approved Application to Sue As A Poor Person on file, you will need to complete the Application, file it with the Clerk and ask the Clerk to present it to a Judge for his/her approval.

If your Application To Sue As A Poor Person was denied, you will not be able to file for a waiver of the publication costs.



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## Step Three: Wait to see if your Motion to Waive Publication Costs is approved

You will need to wait to see if your Motion To Waive Publication Costs is approved. You will know if your Motion is approved if the Order you gave the Clerk is returned with a Judge's signature. If it is approved, you can proceed without having to pay the cost of printing the Notice of Publication in the newspaper. Instead the county will pay for the costs of running the Notice.

If your Motion is not approved, you can still serve your party by publication. You will, however, have to pay whatever fee the newspaper charges to run your Publication Notice.



## Step Four: Complete the Publication Notice and file it with the Clerk

You will find a Publication Notice in the supplement to this packet. The Publication Notice is the form that the newspaper will print. The Notice lets the person you are suing know that a lawsuit has been filed and that he/she has a certain date (deadline) by which he/she must file a response to your lawsuit. While you will select what this date (deadline) is, it must be at least 30 days after the date that the Notice first appears in the paper.

Keep in mind that you have little to no control as to when the newspaper will actually start running the Notice after they receive it from you in the mail. What this means is that if you choose a date which is only 30 days away, you are running the risk that by the time the newspaper actually gets the Notice and begins to run it, less than 30 days will be left by the time it first appears. Consequently, when completing the Notice, your best bet is to put a date at least 45 days after the date you mail it to the newspaper. This gives the paper 2 weeks to start running your Notice. When you have completed your Notice, file it with the Clerk and keep at least 3 file stamped copies for yourself.



## Step Five: Select what newspaper will print the Notice

The Notice must run in a paper which is published in the county where your lawsuit was filed. The newspaper must at least be a weekly paper. If there is no weekly paper in the county where your lawsuit was filed, you can use a paper in an adjoining county if the paper's circulation covers your county.



## **Step Six: Send the Notice of Publication to the newspaper**

In the Supplement to this packet you will find a form entitled Letter to Newspaper. You need to complete this Letter and send it along with a file-stamped copy of the Notice of Publication to the newspaper you selected.

If you received an Order (signed by a judge) waiving the publication costs, you should send this Order to the newspaper along with the Letter and the Notice. If, however, you did not receive an order waiving the costs of publication, you will need to call the newspaper you selected and ask them how much it will cost to run your Notice once a week for 3 consecutive weeks. You will need to either include a check or money order in this amount with your Letter and Notice or you can ask the newspaper to bill you.



## **Step Seven: Mailing the Notice of Publication to the party you are suing**

The Circuit Clerk is supposed to send a copy of the Notice of Publication that you filed to the last known address of the party you have sued. Unfortunately, most Clerks do not do this and require you to perform this step. If this is the case in the county in which you filed, you will need to mail a file stamped copy of the Notice of Publication to the person you are suing. You will also need to file a Certificate of Mailing indicating that you mailed a copy of the Notice as required by law. A Certificate of Mailing is included in the supplement to this packet.

Please note that this Notice must be mailed within 10 days of the date that the Notice of Publication first appears in the newspaper. Consequently you should mail your Notice to the party you are suing at the same time you mail the Notice to the newspaper.



## **Step Eight: Wait until the date on the Publication Notice passes**

The person you are trying to serve by publication has until the date you listed on the Notice of Publication to file his/her response to your lawsuit. If he/she does not file a response within that time, he/she can be held in default and you can proceed with your case. Keep in mind, however, that the person you are suing cannot be held in default unless there was 30 days between the date listed in the Notice of Publication and the date the Notice first appeared in the newspaper. If this was not the case with your Notice, you will have to go back to Step Four.



## **Step Nine: Get and file the Certificate of Publication**

When you serve someone by publication, service is completed once the newspaper runs the Notice of Publication for 3 consecutive weeks. Your proof that the Notice of Publication has appeared in the newspaper for 3 consecutive weeks is the Certificate of Publication. This form is not included in the supplement to this packet because you must get this form from the newspaper.

After your Notice of Publication has run in the newspaper for 3 consecutive weeks, the newspaper should send you (or the Clerk) the Certificate of Publication. The Certificate is a letter or a form that the newspaper completes which certifies that the Notice ran for 3 consecutive weeks and includes a copy of the Notice that appeared in their paper. If you received a fee waiver (you did not pay for the costs of publication) the newspaper may send the Certificate of Publication directly to the Circuit Clerk to be filed.

If this is not the case, you must get this form from the newspaper and file it yourself. As always, be sure to keep a file-stamped copy for yourself.

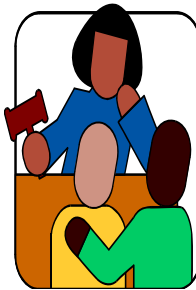
Remember, this form is required to show that service by publication was completed.

**Q: I would rather not the person I am suing know what I am doing. Do I have to serve him/her at all?**

A: Yes. Except in very limited circumstances, the law requires that all persons who are sued be given notice of the lawsuit and a chance to respond to it.

**Q: What do I do if the Judge won't let me serve by publication?**

A: If a judge doesn't want you to serve someone by publication, it is usually because you have not proved to him/her that the person cannot be found and served in person by the Sheriff with a Summons. You should . therefore, make additional (or at least one) attempt to serve the person by Summons. For a discussion on how to serve someone inside the State of Illinois by the sheriff, consult Packet #1 of the Court series. For a discussion on how to serve someone outside the State of Illinois by the sheriff, consult Packet #2 of the Court series.



You cannot use service by publication to serve someone with an Order To Show Cause. A judge will not allow you to serve someone by publication with this Order.

**Q: Do I have to pay the newspaper to run my notice?**

A: Yes. Unless you have an order from the court waiving the costs of publication, you will have to pay a fee for running the Notice of Publication in the newspaper.

**Q: Do I lose any rights when serving by publication?**

A: No, but you do lose your ability to get certain types of relief. Since the party you are suing was never given personal notice of the lawsuit you have filed, even if you win your suit, the court cannot order the party you sued to do things, like pay child support, show up to a hearing, bring you a piece of property, etc. Other types of relief, however, like getting a divorce, changing your name, getting custody of your child(ren) can be granted.



**Q: What is a court file?**

**A:** The file is the way that the courthouse keeps track of a lawsuit.

The file includes all of the documents that were filed, notices of hearings, notes by the judge and clerk, and letters to and from the judge and clerk.

**Q: When do you need to file a document in a court file?**

**A:** Generally, you will file a document when you want to:

have evidence that a task was completed; record an event or a statement; or give notice to someone about something.

**Q: What does it mean to file a document in a court file?**

**A:** Generally, filing a document means giving the Circuit Clerk a copy of a document so that he/she can place it in the court file you want it to go in. When the Clerk files the document, he/she will stamp it with a stamp that says the date (and sometimes the time) the document was filed.

**Q: Does filing a document make it legal?**

**A:** No. The Clerk will not check to make sure that your document is in compliance with the law. Most of the time you can file anything you want as long as you are willing to pay for the filing costs. It does not mean, however, that what you have filed is correct.

**Q: Why is filing so important?**

**A:** Most of the time, filing is the primary way to show that you have met the deadline for something — either to initiate a lawsuit or to notify someone of a lawsuit or a hearing. Filing is also the way that you notify the court of your answer (response) to lawsuit started against you.



Please note that failure to file something on time can cause you to lose your right to proceed with your claim or you may be forced to start over.



## 3 Commonly held beliefs about service which are not true:

**Myth 1: You don't need to try to serve someone in person first, you can just serve them by publication.**

Wrong!! Unless you have no idea where a person lives, works, or could be found including a last known address, you must make some attempt to serve someone with a Summons before you serve them by publication.

**Myth 2: You can't serve someone in jail or prison.**

Wrong!! People in jail or prison can be served just like everyone else. To find out if a person you are trying to serve is in a county jail, call the county Sheriff. To find out if a person is in a State operated correctional facility or prison, call the Department of Corrections.

**Myth 3: You can't serve someone at their place of employment.**

Wrong!! People can be served anywhere as long as the Sheriff can find him/her. Consequently, if it is easier for the Sheriff to find someone at work, then list their work address on the Summons.



## **Make at least one attempt at service with a Summons before you use publication.**

While the law does not require it, most judges will not allow you to serve someone by publication if you have never made an attempt to serve him/her in person with a summons by either a sheriff (or in some counties, a private detective). Making an attempt at service with a summons and filing the service return with the Clerk showing that service could not be completed shows the Judge that you have made at least some effort to try to find the person you are suing before you use publication. For a discussion on how to serve someone in person by the sheriff see Packet #1 or 2 of the Court series.

## **Give yourself some breathing room when deciding on what date to put on the Notice of Publication.**

When choosing the date (deadline) that the person you are suing has to respond to your Notice of Publication, there is a temptation to select the soonest possible date. Keep in mind, however, that there must be at least 30 days from the time your Notice first appears in the paper and the date (deadline) you put on the Notice. Due to printing schedules and costs, a newspaper can't always run the Notice you mailed them in the week that they receive it. Also keep in mind that not every piece of mail a newspaper receives is opened immediately. If you are not careful, therefore, there might not be 30 days between the date the Notice first appears and the date (deadline) you put on the Notice. The best advice, consequently, is to give yourself a little extra time by putting a date which is 45 days after the date you expect it to first appear in the paper.

## **Get help if you need it**

If you have trouble following directions, doing things on time, filling out forms, or keeping track of paperwork, getting someone served properly may be more stressful than it needs to be. If, however, you have a friend you can help you do these things, the job will be a lot easier. Keep in mind, however, that a friend cannot take the place of the advice and experience of an attorney licensed to practice in the State of Illinois. Consequently, if you need legal advice or if trying to serve someone proves to be too difficult a task for you, talk to an attorney.