

How to serve someone by the sheriff outside of 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, call the Self Help Legal Center.

Look for these symbols to tell you when to:



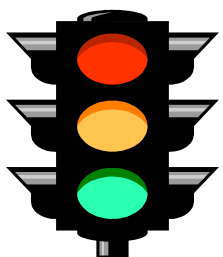
STOP!

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.



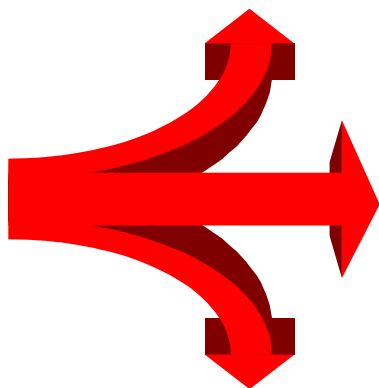
Attorney:

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.



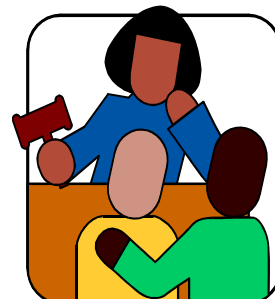
Private Detective:

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 when the person you are suing lives in the same county where you filed your lawsuit and if notice of the lawsuit is sent by certified mail with a 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 or Order To Show Cause 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.

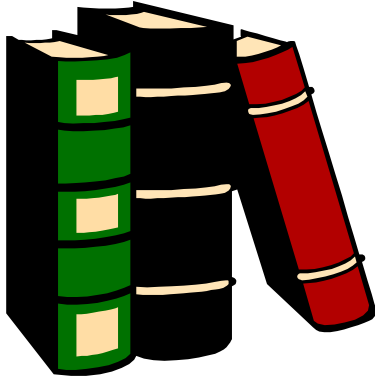


If you are starting a lawsuit, service is not only important, it is required. Service must be done in a certain way and certain forms are required to show proper service. This packet will show you what steps you need to take to serve someone outside Illinois.

Similarly, if you are trying to enforce a court order (like a child support order) through an Order To Show Cause, service 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 with an Order To Show Cause outside of Illinois.

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 do need to file your response to the lawsuit by a certain time 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.

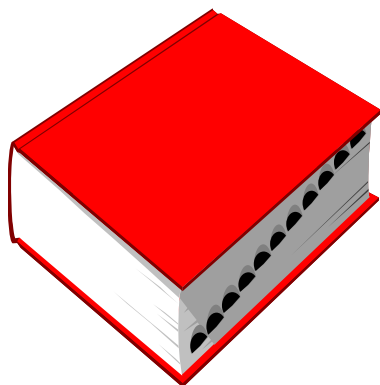


Disclaimer: Please Read !!!

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.

What is Service of Process?

www.Illinoislegalaid.org



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).

Order To Show Cause

An order by a judge for a person to show up to a hearing to explain why he/she has not complied with a court order.

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

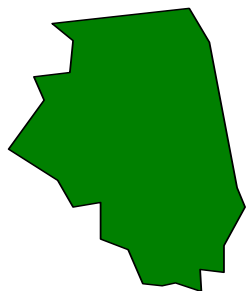
The person who starts a lawsuit.

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.



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.

Who is authorized to serve

Service can only be performed by a sheriff (or his/her deputies) and in counties of less than 1 million population – a licensed private detective. Private individuals cannot complete service.

Summons Requiring Appearance on a Specific Day

In lawsuits where the local court rule requires or allows for a specific date for appearance for a hearing, the Summons itself will specify on what day a person must appear. These Summons must be served not less than three days before the date of the hearing.

Summons in Divorce cases

In any proceeding under the Illinois Marriage and Dissolution of Marriage Act, the Summons must include a notice on the reverse side that there is a court order in effect which prevents either party from physically abusing or harassing the other (or the minor children) and prevents either party from removing the minor child from the State of Illinois (or concealing the child) without permission. The notice must also state that the order (called a "stay order") begins once the party is served with the Summons and that any person who fails to obey the court's order may be subject to punishment for contempt of court.

Order to Show Cause

An Order To Show Cause is an order by the court for a person to appear and explain (show cause) at a hearing why he/she has violated a court order. Unlike a Summons, an Order does not need to be "issued" or "sealed" by the Circuit Clerk and can be sent directly to the Sheriff for service. An Order To Show Cause must be served before the date of the hearing. If a person fails to appear at the hearing when ordered by the Court, he/she can be held in contempt which could mean jail time or a fine. Unlike a Summons an Order To Show Cause is only used when a person has violated a court order and is not used to start a lawsuit or notify someone of a lawsuit that has been filed.

Citation To Discover Assets

A Citation To Discover Assets is an order by the court for a debtor to appear to be asked questions about his/her income and assets. In Illinois, a Citation To Discover Assets must include a Citation

Summary of the law in this area

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Notice which explains the debtor's exemption rights. Unlike a "Summons" a Citation To Discover Assets does not need to be sealed or issued by the Circuit Clerk and can be sent directly to the Sheriff for service. A Citation To Discover Assets must be served at least 5 days before the date of the hearing. If a person fails to appear at a Citation To Discover Assets hearing, he/she can be held in contempt of court which could mean jail time or a fine. Unlike a Summons, a Citation To Discover Assets is only used when a person has had a money judgment entered against them in another case and is not used to start a lawsuit or notify someone of a lawsuit that has been filed.

How long a Summons is valid

No summons can be served later than 30 days after its date of issue by the Clerk. A Summons requiring appearance on a special day cannot be served later than 3 days before the day of appearance.

Service of individuals

With some exceptions service on individuals is complete by leaving a copy of the service forms with the person. Often the complaint or petition or other important documents are attached to the summons, Citation, or Order so the person served knows what the summons is for. Service can also be completed on individuals by leaving a copy of the service forms at the person's usual residence as long as there is someone there (who is also a resident and over the age of 13) who can take the copy. The sheriff or private detective, however, must also send a copy of the summons, Citation, or Order by mail.

Service of individuals outside the State of Illinois

Service of individuals outside the State of Illinois is discussed in Section 5/2-208 of Chapter 735 of the Illinois Compiled Statutes. Serving someone outside of Illinois requires an additional step beyond serving someone inside the State of Illinois in that the Sheriff completing the service must also complete an affidavit which must be filed with the Circuit Clerk. An affidavit form is included in the supplement to this packet.

Service of corporations

To serve a corporation the sheriff or private detective must leave a copy of the Summons, Citation, or Order with the corporation's registered agent or with any officer or agent of the corporation found in the State of Illinois. Similar to individuals, in some cases a private corporation may be served by publication or mail.

Service by publication

Service by publication is used when a person cannot be found and served in person. Service by publication requires additional steps not discussed in this packet along with additional forms not included in the supplement to this packet. For a discussion on how to serve someone by publication see packet #'s 6 & 7 of the How to Serve series. Service by publication **cannot** be used to serve someone with an Order To Show Cause or a Citation to Discover Assets.



Five Steps To Serving Someone

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Step One: Select the proper service form

In the supplement to this packet you will find 5 service forms: a **30 day Summons**, a **Divorce Summons**, a **Summons Requiring Appearance on a Certain Day**, an **Order To Show Cause**, and a **Citation To Discover Assets**. Each form has 2 versions: a Defendant's copy and a Circuit Clerk's copy. You will not use all of these forms, rather, you will need to select which forms you use depending upon the type of case that you have filed.



You may already have one of these forms as it was provided to you in another Self Help Legal Center packet or by your Circuit Clerk. If this is the case, you can use the form that came with that packet or given to you by the Clerk.

If you are filing for a **divorce**: use the **Divorce Summons**

If you are trying to **get a child support or visitation order**: use the **30 Day Summons**

If you are **enforcing a court order**, like a **child support order** or a **money judgment that includes a payment plan**: use the **Order To Show Cause**

If you are suing someone in **Small Claims Court**: use the **Summons Requiring Appearance On A Specific Date**.

If you are trying to **get a payment plan for your money judgment**: use the **Citation To Discover Assets**

If you are trying to **evict someone** or **trying to get personal property back**, use the **Summons Requiring Appearance on a Specific Date (forcible entry and detainer and recovery of personal property only)**

The Defendant's copy is attached to whatever document you filed to start the lawsuit — like a petition or a complaint. The Circuit Clerk's copy includes what is called a "service return" which the Sheriff or private detective completes which indicates whether the person was served or not and if served, the time, date, place, and manner of service. This copy is filed with the Circuit Clerk to prove service was completed.



Step Two: Have the Circuit Clerk issue or seal the Summons.

Have the Circuit Clerk of the county where you are filing your lawsuit issue or seal the Summons you want to use. This step is required for proper service of a Summons. It is not required if you are serving someone with an Order To Show Cause or a Citation To Discover Assets. The Order To Show Cause form, however, must be signed by a Judge.

Five Steps To Serving Someone

Step Three: Notify the other party as to what you have filed.

Attach a copy of the document you are sending to the other party to the Defendant copy of your service form. It may be a petition, a complaint, a motion, a Notice etc. All the service form does is indicate to a person that a lawsuit has been filed or a hearing has been scheduled. Attaching a copy of your complaint, petition, etc., informs the person what type of lawsuit it is and what it is that you are requesting.



Step Four: Sending the Summons to the Sheriff

You will need to find out the name of the county in which the person you are trying to serve lives. Once you find the name of the county, you can then locate the name, address, and telephone number of the county sheriff. You will need to complete the form entitled "Sheriff's Letter" in the supplement to this packet. Mail this letter, the Sheriff's Affidavit form (also in the supplement) along with both copies of the Summons, Citation, or Order to the Sheriff of the county where the person you are suing lives. Again, unless you received a fee waiver (see above), you will have to pay a fee to have a person served. You should include a self-addressed, stamped envelope so the Sheriff can mail these forms back to you.



Step Five: Wait to see if the person is served.

Depending upon which service form you used, the Sheriff has a limited time to serve the Summons, Citation or Order you prepared. If you used a date specific Summons, the Summons must be served at least 3 days before the date of the hearing. If you used a 30 days Summons or the Divorce Summons, the Sheriff has 30 days from the date the Summons was "issued" by the Clerk to serve the party you are suing. If you used an Order To Show Cause, the Sheriff must serve this form before the date of the hearing set by the Judge on the Order To Show Cause form. If you used a Citation To Discover Assets form, the Sheriff must serve this form at least 5 days before the hearing.

The Sheriff should send the Circuit Clerk Summons, Citation, or Order and the Sheriff's Affidavit back to you. Once you receive these documents back, you should file them with the Clerk. If for some reason, you receive the Summons, Citation, or the Order without the Affidavit, you should call the Sheriff and remind them that you need the Affidavit for service outside the State of Illinois.

If the Summons, Citation or Order expired before the Sheriff was able to use it or if the Sheriff was unable to find the person you are suing at the address you gave and you need to try a different address, you will need to prepare a 2nd Summons, Citation, or get another Order signed by the Judge and return to Step Two. If you are using a Summons, be sure to indicate on the Summons that it is the "2nd Alias" Summons. You can repeat this process as many times as you need to, just remember to write the words 2nd, 3rd, or 4th and the word Alias above the word Summons.



If the Sheriff or private detective is unable to locate the person you are trying to serve, you will need to serve him/her by publication. To serve someone by publication, use Packet #'s 6 & 7 of the How to Serve series. You cannot, however, use publication to serve an Order To Show Cause or a Citation To Discover Assets.

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

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 Sheriff cannot find the person I am trying to serve?

A: You have 2 options. You can either try a different address or location for the Sheriff to look for the person or you can try service by publication. Service by publication is discussed in Packet #'s 6 & 7 of the How to Serve series.



Q: What do I do if the person has moved to the State of Illinois?

A: Consult packet #'s 1 & 2 of the How to Serve series on how to serve someone who lives inside the State of Illinois.



Q: Do I have to pay the Sheriff to serve someone?

A: Yes. Unless you have a fee waiver (which is not discussed in this packet), you will have to pay a fee for the sheriff for service.

Q: Can I use a private detective to serve someone?

A: Yes, if you live in a county whose population is less than 1 million people and if the private detective is licensed with the State of Illinois.

Q: Can I serve someone myself?



A: No. This is not only not allowed by law, but it is very dangerous.

Q: What do I do if I don't have an address for the person I am trying to serve?

A: If despite your best efforts, you cannot locate the person you are trying to serve, you can serve that person by publication. Service by publication is discussed in packet #'s 6 & 7 of the How to Serve series.





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 a Sheriff, you can do it yourself.

Wrong! You cannot serve someone yourself. Only a sheriff or a private detective (in some counties) can serve someone. Besides, serving someone in person is dangerous as you have no idea how they might react. Leave service to the professionals.



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.



Give the Sheriff as much information as possible.

The Sheriff is just like everyone else in that if you can make their life or job easier, they will thank you for it. Serving people can be difficult and dangerous as some people try to avoid service and some people respond to service with hostility or threats. If the person you are asking the Sheriff to serve is difficult to find, then give the Sheriff exact directions on how to find them. Be specific in your instructions — include addresses, descriptions of the residence, times or days to attempt service — especially if the person you are trying to serve is hard to find. The more information you give the Sheriff, the better chance he/she will have in making sure that service is completed.



Don't wait until the last second to try to serve someone

If you are using a Summons which requires appearance on a certain date or an Order To Show Cause, then you need to give the Sheriff as much time as possible to complete service. The Sheriff has a lot of things to do besides serve people and some counties (especially rural ones) do not have the staff to have someone devoted exclusively to serving individuals. Consequently, it may be a while before the Summons or Order you send to the Sheriff is actually served.

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.