

ALTERNATE SERVICE BY PUBLICATION AND MAILING

RULE 4 OF THE DOMESTIC RELATIONS RULES

CHECKLIST FOR PLAINTIFFS

GENERAL INFORMATION

- As plaintiff, you are required to notify the other party (“the defendant”) that you have filed a lawsuit. In family law cases, Rule 4 of the Domestic Relations Procedure Rules governs this process. The Rule can be found at: <https://www.mass.gov/rules-of-domestic-relations-procedure/domestic-relations-procedure-rule-4-process>
- Typically, notice in the form of a summons is **personally** delivered to the defendant by a sheriff or constable. Personal service is the **preferred** method of notice.
- When the sheriff or constable cannot find the defendant, or if the defendant is of parts unknown, or if the defendant resides outside of Massachusetts and cannot be served under Rule 4(e), the Court may permit you to serve the defendant by publication and mailing. This is a method of **last resort**. This method of notice is expensive, will delay your case, and may result in the Court not being able to grant you certain relief.
- All efforts to find the defendant must be made **before** resorting to this method of notice. It is not enough to say, “I don’t know where the defendant is”. You must first try to find the defendant.

REQUIRED FORMS

To get the Court’s permission to serve by publication and mailing, you must first file a:

- Motion (CJD 400) for Alternate Service **AND** an Affidavit explaining why service on the defendant in person is not possible and the steps taken to find the defendant. You must draft these forms yourself *****OR***** you may use the Court form:
- Motion for Service by Alternate means and Affidavit of Diligent Search* (CJP 31).

In addition, you must file or have on file a current:

- Military Affidavit (TC002: 09/2017)

Court forms are available for download in PDF format at <https://www.mass.gov/info-details/miscellaneous-probate-and-family-court-forms>

MAY NEED FORMS

If you cannot afford the cost of publishing the summons, you may file an:

- Affidavit of Indigency found at: <https://www.mass.gov/indigency-waiver-of-court-fees>

On the 2nd page of the Affidavit of Indigency, go to SECTION 2 and check the 4th box. Where it says “for (*specify*)” write “publishing the summons in the newspaper.”

TWO-STEP NOTICE PROCEDURE

If the Court approves your request for notice by publication and mailing, the Court will mail you an *Order for Service by Publication and Mailing* along with a *Summons by Publication and Mailing*. **This is a time sensitive document!** Read it! Generally, you have only **30 days** to complete all notice requirements. You should immediately do the following:

STEP #1: NOTICE BY REGISTERED OR CERTIFIED MAIL

As soon as you receive the *Order for Service by Publication and Mailing* from the Court, you must mail, by **registered or certified mail, "return receipt requested"** a **copy** of the following documents to the defendant's **last known address**:

- the *Summons by Publication and Mailing form*; *****AND*****
- the **Complaint** that you filed to start the lawsuit.

STEP #2: NOTICE BY PUBLICATION

As soon as you receive the *Order for Service by Publication and Mailing* from the Court, you must mail a **copy** of the following documents to the Legal Notice Department at the newspaper listed in the *Order for Service by Publication and Mailing*:

- the *Summons by Publication and Mailing form*; *****AND*****
- the Affidavit of Indigency, if filed and if approved by the Court.

See also "**Proof of Notice**" below.

PROOF OF NOTICE

You will need proof that you gave notice to the defendant by publication and mailing.

1. Proof of Notice by Registered or Certified Mail

After attempts have been made to notify the defendant by registered or certified mail, the post office will send you either:

- a **green return receipt** with the defendant's signature on it, *****OR*****
- the returned **unopened envelope** with the green receipt card attached.

2. Proof of Notice by Publication

After the newspaper publishes the summons, you must get a copy of the publication. The copy must have **the date and the name of the newspaper on it**.

NEXT STEPS

After notice is completed by publication and mailing, fill out and sign the **RETURN OF SERVICE** at the bottom of the *Order for Service by Publication and Mailing*. File with the Court (in person or by mail):

- the *Order for Service by Publication and Mailing form* with your signed **RETURN OF SERVICE** at the bottom; *****AND*****
- the **full dated page of the newspaper** with the publication of the summons; *****AND*****
- the **green return receipt** with the defendant's signature on it, or the **returned unopened envelope with the green receipt card attached**.