

**COUNTY OF MONROE
OFFICE OF THE SHERIFF
ROCHESTER, NEW YORK**

GENERAL ORDER MULTI-BUREAU	DATE OF ISSUE May 4, 2021	EFFECTIVE DATE May 4, 2021	NO. 056-21
Subject: General Order Service of a Civil Process		Distribution All Personnel	Amends
REFERENCE: NYS Civil Practice Laws and Rules (CPLR) NYSSA Standards 33, 99, 101, 102, 103, 106, 108, 109, 111			RESCINDS 056-07

Purpose: To create a uniform policy and explain the general ledger requirements for service of a civil process for the Monroe County Sheriff's Office (MCSO).

Policy: All members shall adhere to the procedures delineated herein when called upon to serve a civil process.

Definitions: Actual Place of Business: Any location the defendant, through regular solicitation or advertisement, has held out as their place of business.

* Suitable Age and Discretion (SAD): A person, who understands the nature and purpose of the particular order that is being served. This means that the person is responsible and likely to give the papers to the defendant or respondent.

Due Diligence: Making every reasonable attempt, a minimum of three separate occasions at different times during the day and on different days, to personally deliver, or serve to an alternate person and/or mailing address. Generally, more than one attempt during non-business hours is advised.

Natural Person: A person other than a partnership, corporation, infant, incompetent, the state, or a governmental subdivision.

Infant: Any natural person who is less than 18 years old.

I. Processing Procedures

A. The Civil Bureau will date and time stamp all copies of civil processes and enforcement paperwork.

1. Civil Processes will be accepted in the Civil Bureau, between the hours of 9:00 a.m. – 5:00 p.m., Monday through Friday. 8:00 a.m. – 4:00 p.m. (July/August).

2. The Civil Bureau will create a case file and accompanying case number for each job that is received and will include the following documentation:

a. A recording of the description of the document received for service, the date and time of receipt, name(s) of the person(s) to be served, name and address of the party who issued the process, title of the action, fees collected.

b. Copies of any correspondence, notes, returns or other facts pertinent to the process shall be recorded and filed with the case file folder or in the computer file.

- c. The Deputy's name and IBM# that served the process and the date and time it was served.

B. Fees, Expenses and Poundage

1. A fee schedule will be established pursuant to Article 80 CPLR and must be used for service and enforcement fees for all types of civil processes and round trip mileage charges.
2. The schedule shall be updated to reflect statutory and practical changes.
3. Fee schedules and mileage charts shall be provided upon request to interested parties.
4. Fees and expenses must be collected in advance with the following exceptions:
 - a. State and political subdivisions shall be billed for service, fees and expenses by submitting an official claim voucher after service is rendered.
 - b. Individuals who are judicially declared indigent persons under order from a court of competent jurisdiction.
 - c. Orders of Protection.
5. Unpaid fees, expenses and poundage shall be deducted from any sums collected or the proceeds of any sale prior to distribution to the prevailing party. In the event there are no proceeds from which to deduct said fees, expenses or poundage, the party who delivered the process or requested the service shall be liable to the MCSO for payment.
6. Any advance expenses likely to be incurred shall be estimated and the party requesting enforcement prior to execution shall advance the amount estimated.
7. Poundage shall be collected on settlements and vacates as well as on the proceeds of sales and sums collected in connection with executions and attachments in accordance with the CPLR.

- * C. Members will obtain the original, plus the appropriate number of copies of the service work. The copies are to be utilized for service, not the original.

- D. Staff will ensure that all papers meet the requirements per CPLR.

Note: Failure to identify the court where the action initiated is a jurisdictional defect.

- E. Upon receipt of a Supreme or County Court Summons, the summons shall be reviewed to verify that the index number and the date the summons was filed with the County Clerk are on the summons.

II. Service of the Summons

- A. Civil process mandates shall not be executed or served beyond geographic limits of the county, except upon order of a court of competent jurisdiction or upon verification of statutes referred to within the mandate (CPLR, Section 301 & 302).
- B. When serving a summons upon a natural person, service may be accomplished by one of the following methods;

1. Personal delivery to the individual to be served.
 2. Delivery to a person of suitable age and discretion at the actual place of business or residence of the person to be served. A copy of the summons must then promptly be sent via first class mail to the known address or actual place of business of the individual being served.
 - a. Failure to mail the copy will render the service invalid.
 - b. If the summons is mailed to such person at his/her actual place of business, a plain envelope, bearing no indications of a return address that the communication is from an attorney or concerns an action against the person served, should be utilized. The envelope must bear the legend "personal and confidential".
 3. Personal delivery may be made to an agent of the defendant under CPLR, Section 318, except in matrimonial cases.
 4. If service cannot be made with due diligence in accordance with the aforementioned methods, service may be made by "nail and mail" by affixing the summons to the defendant's door of either the actual place of business, dwelling, or usual place of abode, and then within twenty (20) days, mailing via first class a copy of the summons to the defendant's last known address or business.
 - a. The summons should be attached through the use of a tack, tape, rubber band, etc. that will ensure a genuine adherence.
 - b. The summons shall not be placed in a plain envelope, or slid under a door.
 5. If the service methods described above are not possible, the attorney may ask the court to direct an alternative manner in which a summons is to be served. When receiving an order for service, it must be reviewed to ensure that it is in compliance with all provisions set forth in accordance with NYS Civil Practice Laws and Rules.
- C. Exceptions to personal service:
1. Matrimonial actions must be served by personal delivery, unless otherwise directed by the court.
 2. Service can be by publication if the plaintiff makes an ex-parte motion and the court grants said motion.
- D. Service on an infant is made by serving a parent, guardian, or any other individual having legal custody.
1. If the person classified as an infant is married, the adult spouse or other adult with whom he/she resides, or his/her employer is to be served.
 2. If the infant is at least 14 years or older, he/she must receive a copy of the summons.
 3. If the parent is served and the infant is not available, the copy for the infant shall be given to the parent (sub-service), and a copy shall be mailed to the infant.
 4. If the summons is mailed to the parent and the infant, both must receive their own separate mailing.

- E. Service on an incapacitated person unable to manage his/her personal needs or property, for which a guardian has been appointed is made by serving both the incapacitated person and the guardian, unless the court dispenses with serving an incompetent individual (Article 81, MHL).

Note: Personal service on a person for whom a conservator or committee has been appointed shall be made by serving the conservator or committee and the incompetent individual unless the court dispenses with serving an incompetent individual in accordance with Section 309, CPLR.

- F. Service on a partnership is made by serving any partner, the partners' managing agent, or the partnership's executive secretary, providing that a copy of the summons is mailed to the partner who is intended to be served. The mailing is to be sent to the last known address, or actual place of business. The proof of service must be filed within twenty days.
1. Where service can not be made with due diligence, it may be made by affixing a copy of the summons to the door of the place of business of the partnership and mailed as indicated above.
 2. Service may be made to an agent who is designated to receive processes.
 3. Service may occur by alternative methods if so ordered by the court.
- G. Provisions for personal service upon a limited partnership are more restrictive than service upon a partnership, such that delivering a copy personally to any managing or general agent or employee authorized to receive processes, shall be acceptable means to make service upon a limited partnership. If service is impractical the court may direct the method of service, upon motion without notice (CPLR Sec. 310-a).
- H. Service can be made on limited liability companies by making delivery to any member of the company if the management is vested in its members. As such, its agents or a designated person, are authorized to receive processes. If service is impractical, the court may direct the method of service, upon motion without notice.
- I. Personal service upon a corporation or a governmental subdivision shall be made by delivering the summons as follows:
1. Upon any domestic or foreign corporation, to an officer, director, managing or general agent, cashier or assistant cashier, or any other agent authorized by appointment or law to receive service.
 2. Service on the State is made by serving the Attorney General or any Assistant Attorney General. When receiving a summons with instructions to serve a specific State official, that person must also be served.
 - a. Service on a State officer sued solely in his/her official capacity is made by delivering the summons to the officer, chief executive officer, designee to receive processes, or certified mail with return receipt requested in addition to serving the Attorney General or any Assistant Attorney General pursuant to Section 307 (1) CPLR.
 - b. The envelope used for certified mailing must bear the legend "Urgent Legal Mail".
 3. Upon the City of New York, to the corporation counsel or to any person designated by him/her in writing, receipt of this process is to be filed in the Office of the Clerk of New York County.

4. Upon any other city, to the mayor, comptroller, treasurer, counsel, clerk, or if the city lacks such officers, to another such officer who is performing a corresponding function under another name.
5. Upon any county, to the chairman, clerk of the board of supervisors, clerk, attorney, or treasurer.
6. Upon a town, to the supervisor or the clerk.
7. Upon a village, to the mayor, clerk, or any trustee.
8. Upon any town or village board or commission, to the clerk of the respective town and/or village.
9. Upon a school district, to a school officer, as defined in the New York State Education Law.
10. Upon a park, sewage, or other district, to the clerk, any trustee, or any member of the board.
11. Upon a court of three (3) or more judges; service may be made to any one of the judges.

III. Other Types of Service

- A. Citations: Personal delivery is required unless another manner of service is directed by the court. Citations must be served at least ten days prior to the hearing date specified in the citation. Only the issuing court may dispense with this requirement.
- B. Show Cause Orders: This type of process requires a specific manner of service to be made in a relatively short period of time. Ten (10) days before the return unless directed by the Judge who signed the order.
- * C. Subpoena: Usually directed to a witness and the witness is not usually the defendant. Frequently, a fee must be tendered to the witness when making service. Subpoenas must be served at least twenty-four (24) hours before the time set for appearance and is served in the same manner as a summons.
- D. Upon an inmate: the Jail Bureau shall be advised of the civil process to be served and Civil Bureau deputies will personal delivery it to the inmate.

IV. Proof of Service (CPLR Section 306)

- A. Proof of Service of a Summons
 1. Generally, proof of service shall specify the person who was served, the paper type, date, time, and the place and manner of service, articulating the facts showing that the service was made by an authorized person in an acceptable manner.

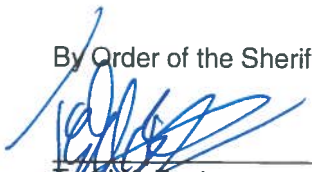
2. Proof of service shall contain a description of the person served. If service is made by personal delivery or to a person of suitable age and discretion, or to an agent for service, the proof shall also include a description of the person to whom delivery was made. Descriptions should be inclusive, but not limited to, gender, race, hair color, approximate age, height, weight, military service and any other identifying marks or features.
 3. Where service is made pursuant to CPLR, Section 308 (4), the proof of service shall specify the dates, times, and addresses of the attempted service pursuant to CPLR Sections 308 (1) and 308 (2).
 4. Proof of service will be in the form of an affidavit.
 - * 5. The deputy returning a process shall complete an attempted service affidavit by signing the form and specifying the reason for the return. A Notary stamp is required.
- B. Periodically, a plaintiff or attorney will provide a certificate or an affidavit. Matrimonial actions, out-of-state papers, and many other types of service require special proof forms. When provided with such a form, it must be reviewed prior to signature.
 - C. When service is made on a person by delivery to an individual of suitable age and discretion, the proof must be filed by the plaintiff within twenty (20) days of the date of service.
 - D. Proof of service of a citation that is issued by the Surrogate Court must be filed with the court clerk at least three days before the date set for hearing the citation, therefore, staff members must expedite the return of all papers to the Civil Bureau.

V. Effecting the Service

- A. An address for service, letter of instructions and a brief description of the person to be served should be provided. In instances where the defendant cannot be located at the address provided, all efforts should be made to ascertain a new address.
- B. Individuals cannot be compelled to identify themselves; however, identification by a neighbor or co-worker is acceptable. Service on a person, a member of the household, or an agent requires that a record be made of the description of the person served. When serving a corporation or government body, an authorized person must accept service. A recorded description of such officer or agents is also necessary.
- C. Some individuals are legally immune from service however, service should nonetheless be affected. Those individuals claiming immunity have legal means available to prove such immunity from service.
- D. Delivery of a copy of the process to the person to be served is required. If service is refused, a copy should be left in such a manner that it may be readily obtainable by the defendant along with any special instructions.
- E. Service of process on Sunday, for the exception of a criminal process, is void. Service on a Saturday to a person who observes that day as their Sabbath is considered a crime, but only when such service is made maliciously and with prior knowledge of such observance.
- F. A process will not be concealed, nor will members use deception to affect a service, or represent the process to be something for which it is not.

- G. Members will not provide legal advice, recommend an attorney or law firm, provide specifics of responding to a summons, or accept the process back after making the service in relation to any process being handled by the Civil Bureau.
- H. Employees shall not engage in the business of private process serving, nor shall he/she serve any process that has not been officially received and recorded by the MCSO unless specifically authorized by written directive(s).
- I. Use of physical force to gain entry to effect service is expressly prohibited.
- J. All questions relating to the service of a civil process will be directed to the attention of the Chief of the Civil Bureau, or to the Sheriff's Legal Counsel.

By Order of the Sheriff



Todd K. Baxter

* Indicates a significant change from the previous order.