

SERVING THE SUMMONS BY PUBLICATION (WHEN YOU CAN'T FIND YOUR SPOUSE)

Cv Instruction 2-1

To start any lawsuit, including a divorce, the plaintiff must file a Complaint with the court and notify the defendant what is going on. Often in a divorce case, the plaintiff has not seen his or her spouse for some time and may have no idea where his or her spouse is; yet, the plaintiff must still make a good faith effort to see that the spouse gets the divorce papers and has an opportunity to contest the divorce if s/he wishes to do so. If you genuinely do not know where your spouse is, you must be prepared to demonstrate to the court clerk and to the judge that you have tried your best to find your spouse. Here are some ways in which to do that:

Step 1: -- Attempt to find your spouse:

1. Write a letter to your spouse's parents at their last known address and inquire as to your spouse's whereabouts. Send the letter by certified mail, return receipt requested, and keep a copy of the letter. Be sure you date the letter and include your return address so the family can notify you about your spouse's location. When the receipt is returned to you, keep it with your copy of the letter.
2. Do the same thing with friends of your spouse who might know where s/he is. Again, keep copies of your inquiries.
3. Contact the Department of Motor Vehicles in the state or states where you believe your spouse was last. Ask the Department for your spouse's address. Depending on the state, the Department may require that you complete a special form and pay \$2.00 to \$5.00 for it to process the information. They also may want to know why you want the information.
4. Visit the public library in your city or town and check through city directories or telephone books in towns where your spouse might be or might have been. Write down what you have done to locate your spouse in this way.
5. Contact the voter registrar in the county or counties where your spouse might be living and ask for his or her current address. Again, keep a copy of your letter and mail it with return receipt requested.
6. If your spouse receives benefits from the federal government, such as Social Security or Veteran's Administration benefits, you may be able to get the government to give you your spouse's current address. You will have to complete a special application for the information, explaining your purpose for requesting it. Some agencies may not be willing to give it to you.
7. If your spouse is paying child support, you can fill out a Request for Information at the Child Support Services Office that may allow them to release his/her current address to you.

NOTE: As you attempt to find your spouse through the various efforts outlined above, please keep in mind that if your spouse does not receive actual notice of your divorce proceeding, s/he can contest property division, child custody and support when s/he does find out about it later on. Also, if you have not tried to discover where your spouse is before you publish, the judge may not grant your divorce until you do so.

Step 2 – Obtain the following forms:

- **Motion and Affidavit for Service by Publication**, Cv 1-7
- **Order for Service**, Cv 1-8
- **Summons by Publication** D 1-2 (Use this in place of Cv 1-1)
- **Affidavit of Mailing of Summons & Complaint Pursuant to Order for Publication** Cv 2-5

Step 3 – Complete these forms and make copies:

- **Motion and Affidavit for Service by Publication.** Assemble the proof of your work in trying to locate your spouse and attach it to the **Motion and Affidavit for Service by Publication**. Complete the information in the Affidavit and sign it before a Notary Public. Make one copy of the Affidavit for your records.
- **Order for Service.** Note that the Order requires the last known address of your spouse. Note also that you must name the newspaper you have selected to publish the Summons. The news-paper you choose should be one that is circulated in the area where you think your spouse now lives or where s/he has lived and either s/he or someone s/he knows will read it and, in that way, your spouse will be given notice that you have filed for a divorce. Make two more copies of your completed Order for Publication, keep one copy for your records.
- **Summons** Make two copies.

Step 4. Take these completed forms to the court clerk for filing:

- The original and copies of your **Complaint** – see D Instruction 3
- **The filing fee** – see D Instruction 3
- **Motion and Affidavit for Service by Publication**
- **Order for Service** (original and one copy)
- **Summons by Publication** (original and two copies)
- **Self-addressed, stamped envelope** (With enough postage so the court clerk can mail back to you 2 copies of the Complaint, the original and 2 copies of the Summons and 1 copy of the Order for Service.)

The judge will review your Affidavit and if it is acceptable, sign the Order for Service, giving you permission to serve your spouse by publication. The court clerk will then complete the Summons and mail your copies to you in the self-addressed, stamped envelope you provided. If you do not provide the postage paid envelope, you will need to contact to courthouse to see if the Order for Service by Publication has been signed and return to the courthouse to pick up your copies. **YOU MAY NOT SERVE YOUR SPOUSE BY PUBLICATION UNLESS THE COURT SIGNS AN ORDER GIVING YOU PERMISSION TO DO SO.**

Step 5: (After receiving back a signed copy of the Order for Service, allowing you to serve the Summons by Publication, and the signed Summons):

- Mail a copy of the Summons and a copy of the Complaint to your spouse at the last known address most likely to give him/her notice.
- Complete the **Affidavit of Mailing of Summons and Complaint Pursuant to Order for Publication of Summons**. Sign the Affidavit of Mailing before a Notary Public and file it with the court.
- File the original **Affidavit of Mailing of Summons and Complaint** with the court and keep a copy for your records.

Step 6: Make arrangements for the newspaper to publish the Summons

- Contact the newspaper you have listed in the Order for Publication. Ask if you will need to prepay for the publication of the Summons. If so, ask what form of payment they will accept (cash or personal check).
- Deliver a **copy** of the Summons to the newspaper. You must include payment for four separate publications unless the newspaper will bill you later for the total amount. **Request that the Summons be published**

once a week for four consecutive weeks in the newspaper. Provide the newspaper with your name,

address and telephone number. Provide a stamped, self-addressed envelope to the newspaper. **Do NOT send the original Summons to the newspaper. Keep the original Summons in a safe place. You will need it later.**

- The newspaper will send you a notice that proves the Summons was published (this is called a “Proof of Publication”).

Step 7: File with the Court:

- **Proof of Publication** (make a copy for your records)
- **Original Summons**

Step 8: Wait 20 Days –Begin with the day after the last date the Summons was published.

Step 9: Complete and File with the Court:

- **Motion and Affidavit for Entry of Default** (keep a copy for your records)
- **Default** (keep a copy for your records)

See D Instruction 5 for continued instructions to Finalize your Divorce