

## SMALL CLAIMS HOW TO SERVE A PERSON OR BUSINESS

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### *Preparing to Serve the Defendant:*

- Upon completion of filing your Plaintiff's Claim (SC-100) with the proper court, the court clerk will give you a hearing date.
- It is solely your responsibility to make sure that each defendant is properly notified of this hearing date.
- You must arrange for someone other than yourself to complete **service of process** on each defendant.

### *Service of process can be legally done in the following ways:*

- **Certified mail by the court clerk-** The court clerk may serve the Plaintiff's Claim (SC-100) on the defendant by certified mail and restricted delivery. There is a \$10 fee for this service. The court clerk receives a return receipt indicating that the person identified by you for service signed for the certified mail. Within 10-15 days after the clerk mails the Plaintiff's Claim (SC-100), you should call the small claims clerk to determine that your claim has been successfully served. You should provide the clerk with the case number and hearing date when requesting this information.

NOTE: If the defendant does not sign for the mail, they are not considered served and you will have to continue trying to complete service of process on that defendant.

- **Personal service-** A process server, someone other than yourself who is 18 years or older and not a party to the lawsuit, may give a copy of the Plaintiff's Claim (SC-100) to the defendant. Most plaintiffs use a professional process server or the sheriff where available, as a process server. You are entitled to reasonable reimbursement from the defendant for the cost of service if you win the case. If you decide not to use a professional process server or the sheriff and have a friend serve the papers, make sure that the papers are properly served on the defendant. It's not enough merely to drop the papers at the doorstep or serve a member of the household. Service of process is ordinarily accomplished by delivering a copy of the Plaintiff's Claim (SC-100) to the following persons:
  - In the case of an individual defendant- To the defendant in person, or to someone that the defendant has authorized to receive service.
  - In the case of a partnership- To (1) a general partner, (2) the general manager of the partnership, or (3) an individual or entity that the partnership has designated as its agent for service of process.
  - In the case of a corporation- To (1) the president or other head of the corporation, (2) a vice president, (3) a secretary or assistant secretary, (4) a treasurer or assistant treasurer, (5) a general manager, (6) an individual or entity that the corporation has designated as its agent for service of process, or (7) any other person authorized to receive service of process.

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- In the case of a minor- To the minor's parent or guardian or, if no such person can be found with reasonable diligence, to any person having the care or control of the minor, or with whom the minor resides, or by whom the minor is employed. If the minor is age 12 or older, a copy of the claim also must be delivered to the minor.
- **Substitute service-** A process server may leave a copy of the Plaintiff's Claim (SC-100) at the defendant's home or usual place of business. It must be left in the presence of a competent member of the household who is 18 years or older, or with the person in charge at the defendant's place of business during normal office hours. In addition, the process server must tell the person being served what the papers are for, and a copy of the papers must also be mailed to the defendant by first class mail at the place where the papers were left within ten days of the service. Substitute service is considered to be completed on the tenth day after mailing. Your process server must state the name of the defendant and the person who the papers were left on the proof of service form (SC-104). You must return this proof of service form to the clerk of the court at least **5 days** before the hearing.
- **Service on non-resident motorist-** A process server may serve a non-resident motorist involved in an in-state accident by first serving the California Department of Motor Vehicles, and then serving the defendant by any of the methods outlined above or by registered mail. This is a rather complex process, and you should consult with the court clerk or small claims advisor before serving a non-resident motorist outside California.

*Serving the Defendant in a Timely Manner is Important:*

No matter which type of service you use, service must be completed within explicit time limits before the hearing. As a courtesy, try to give the defendant more advance notice than is legally required.

1. **Personal service** must be completed at least:
  - **15** days before the hearing if the defendant lives or has his or her principal place of business in the same county where the hearing is held, or
  - **20** days before the hearing if the defendant lives or has his/her principal place of business outside the county where the hearing is held.
2. **Substitute Service** must be completed by mailing the SC-100 claim (after a copy has been personally given to someone at the residence/business) at least:
  - **25** days before the hearing if the defendant lives or has his or her principal place of business in the same county where the hearing is held, or
  - **30** days before the hearing if the defendant lives or has his/her principal place of business outside the county where the hearing is held.

*Filing the Proof of Service Form (SC 104):*

- **Proof of Service (SC 104)** is a court paper filed by a process server as evidence that she served the witness or party to the lawsuit with the court papers.
- The proof of service must be filed 5 days prior to the court hearing.

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*What Happens if you Fail to Serve the Defendant in a Timely Manner?*

- If you do not serve the defendant within these explicit time limits, the defendant may ask for a postponement and, in most cases, a postponement will be ordered.
- In counting the days, do not count the day in which service was completed, but do count the day of the hearing.

Normally, only service of process in the State of California is acceptable, but there are two exceptions to this rule.

*Two Situations Where Out of State Service is Acceptable:*

- A nonresident defendant who owns real property in California: The defendant has no agent for service of process and the claim relates to that property. (The nonresident defendant may send a representative or submit an affidavit to defend the claim.)
- A nonresident defendant who owned or operated a motor vehicle involved in an accident on a California highway: Service of process is made on both the defendant and the Department of Motor Vehicles.
- Since out-of-state corporations and partnerships that operate here usually designate a California agent for services of process, you may be able to meet the in-state service requirement by serving the corporation's agent for service of process. To obtain that information call (916) 563-7315 (recorded message).

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