

# Service of a Summons and Complaint

## Research Guide

Last Reviewed: January 2013

### Scope:

This guide is an introduction to the methods available for service of a summons and complaint. It is not intended to be a comprehensive resource. Additional research may be necessary.

### Deadline for Service Under San Diego Local Court Rules:

- In San Diego County, the plaintiff must have copies of the summons and complaint served on all named Defendants within sixty (60) days after filing the complaint with the court, and must file Proof(s) of Service with the Court (see San Diego Superior Court Local Rules, Div. II, Civil, Rule 2.1.5 and Judicial Council Form POS-010).
- If the plaintiff cannot complete service within this time period, plaintiff must file a **Certificate of Progress** with the court indicating why he or she has not completed service and what he or she is doing to effect service (San Diego County Superior Court Local Form SDSC CIV-144).
- Once service is complete, the plaintiff must file a **Certificate of Service** with the court (San Diego Superior Court Local Form SDSC CIV-345), as well as the original summons.

### Persons Who Can Serve the Summons & Complaint:

Any person 18 years of age or over and not a party to the action may serve the summons and complaint (California Code of Civil Procedure §414.10). The plaintiff **may not** serve the summons and complaint.

### Methods of Serving the Summons & Complaint:

#### *Personal Service:*

The summons and complaint may be served by having a copy hand-delivered to the person being served (*California Code of Civil Procedure* §415.10).

#### *Substituted Service:*

This method is usually allowed when serving certain kinds of businesses and state or local government entities. It is also available for serving an elusive individual defendant who cannot be served at his or her home or place of work despite attempts to serve the defendant there on three different days, at three different times of day (San Diego Superior Court Rules, Div. II, Rule 2.1.5 for details of how attempts must be made. Substituted service is deemed complete 10 days after mailing (see below).

- To make substituted service on a **business or government entity**, leave a copy of the summons and complaint at the defendant’s office during usual business hours with the person” apparently in charge of [the] office or place of business,” at least 18 years of age, who must be told what the papers are. Then mail a second copy of the summons and complaint to the same place. (CCP §415.20(a))
- To make substituted service on an **individual defendant**, leave the documents at the person’s home, business or mailing address (not including a post office box), with a competent member of the household or person in charge of the office who is over 18, and inform the person that the papers are for a lawsuit. Then mail a second copy of the summons and complaint to the same place. (CCP §415.20(b)) You should serve and file a declaration of due diligence with the proof of service (see *West’s California Code Forms* (6<sup>th</sup> ed.), *Civil Procedure* §415.20(b), Form 1 at KFC 68 .W4 C5; *California Forms of Pleading and Practice*, Service of Summons §518.76 at KFC 1010.A65 C3).

### ***Service by Mail:***

The summons and complaint may also be served by mailing a copy of the summons and complaint to the defendant, together with two (2) copies of the *Judicial Council’s* “Notice and Acknowledgment of Receipt” form POS-015, along with a self-addressed, stamped envelope. Service is complete when the Defendant signs and returns the Notice and Acknowledgment. If he or she does not, then service is not complete, and you will need to try another method of service, but you may be able to recover the additional costs of service from the defendant (*California Code of Civil Procedure* §415.30).

### ***Service by Posting:***

In **Unlawful Detainer** cases, the summons and complaint can sometimes be served by posting a copy on the premises and then mailing a copy of the summons and complaint by certified mail to the defendant’s last known address (*California Code of Civil Procedure* §415.45). Service by posting can be done **only** if authorized by an order of the court, after plaintiff files an affidavit or declaration showing due diligence and that a cause of action actually exists against the defendant (see *California Landlord’s Law Book: Evictions* (13<sup>th</sup> ed.) at KFC145.Z9 L32 2009; *California Forms of Pleading and Practice*, *Landlord: Eviction* §333.102 at KFC 1010.A65 C3). Service is complete the tenth day after posting and mailing.

### ***Service by Publication:***

Service by publication is acceptable if the defendant cannot, with reasonable diligence, be served by any other method. As with service by posting, you must get a court order to serve a defendant by publication by filing an application with the court showing that you have used due diligence in trying to serve the defendant using other methods (see *California Code of Civil Procedure* §415.50; and see San Diego County Superior Court Local Forms SDSC CIV-048 Application for Order for Publication of Summons/Citation and SDSC CIV-049 Order for Publication of Summons/Citation); and California Forms of Pleading and Practice, *Service of Summons* §518.78, at KFC 1010.A65 C3, for Declaration of Mailing Pursuant to Order for Publication. See Government Code §6060 *et seq.* for details of when and how the notice must be published, and when service is deemed complete.

**Summons and Proof of Service Forms:**

- *Summons and Proof of Service of Summons*: Judicial Council Form SUM-100 and POS-010.
- *Plaintiff's Claim and ORDER and Proof of Service (Small Claims)*: Judicial Council Forms SC-100 and SC-104.
- *Summons and Proof of Service of Summons (Family Law)*: Judicial Council Forms FL-110 and FL-115.
- *Summons and Proof of Service (Unlawful Detainer)*: Judicial Council Form SUM-130 and POS-010.
- *Declaration of Lost Summons After Service*: Judicial Council Form SUM-300.
- *Notice & Acknowledgment of Receipt*: Judicial Council Form POS-015

The California Code of Civil Procedure also covers other forms of service, i.e. service of summons on a minor (CCP §416.60), on a corporation (CCP §416.10), on a defendant who resides in a gated community (CCP §415.21), or on a public entity (CCP §416.50).