

Oregon Family Law

Guide to Service Part 1: The Basics

Created by the Education Subcommittee of the State Family Law Advisory Committee (SFLAC)

May 2023

INSIDE:

A step-by-step guide for how to serve legal papers in family law cases in Oregon.



Caution: The information in this booklet is not legal advice. It is intended for educational purposes only to help you get ready for court. Family law cases can be complex, and the law changes all the time. You should talk to a lawyer if you have questions. If you need help finding a lawyer, call the Oregon State Bar at 503-684-3763 or toll free at 1-800-452-7636. Oregon Law Center and Legal Aid Services may also be able to help you for free. To find your local legal aid office and for free legal information, visit OregonLawHelp.org.

Guide to Serving Legal Papers in Family Law Cases

What does it mean to “serve” legal papers?

After you file your lawsuit, you must formally give the other side the legal papers filed with the court. This step is called “Service.” This guide tells you what you need to know about service.



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Why does service matter?

Service is how the other party knows:

- They are being sued, and there may be serious consequences if they don't respond
- What you want the court to do
- What they need to do if they disagree

There are very strict rules you must follow.

Lawsuits have a timeline. The case starts when you file your court papers telling the court what you want. The deadline for the other party to respond is based on the date of service. If they do not respond by the deadline, you can file more papers to ask the court for a judgment against the other party.

The court needs proof.

You must file proof of service with the court.

Read Guide to Service Part 2: Tackling Challenges if the other party:

- is in jail or prison,
- is in the military,
- is in another country, or
- can't be served.



If you don't follow these steps, your case can be delayed or dismissed!

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1. File your papers with the court.

Can I serve the other party before I file my lawsuit in court?

No. You must file the Petition or Motion before the other party can be served.



Before you file, make copies (the court can make copies for you):

- 1 copy for you
- 1 copy for the other party
- Copies for each adult child (shared children ages 18, 19, or 20)
- 1 copy for the Division of Child Support (if required)



2. Find someone to serve the papers.



Who can serve legal papers?

Anyone who is:

- at least 18 years old
- lives in Oregon or the state where the papers will be served
- is not a party to the lawsuit, a party's attorney, or a party's employee

You can't serve the other party unless they agree to sign an "Acceptance of Service."

Examples of people who can serve papers:

- A friend, family member, or someone else if they meet the qualifications listed above.
- The sheriff in the county where the other party lives. There is a fee. If service is in Oregon, you can ask the court to waive or defer this fee. The sheriff may ask for proof your fees were waived. The sheriff will need extra information from you to find and serve the other party.
- A private company or individual, called a "process server." Process servers deliver legal papers for a fee. The court can't refer or recommend a specific process server.

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3. Prepare the papers for the server.

The service papers must include:

☐ Copy of Summons or Order to Show Cause

The Summons is like a cover letter that tells the other party:

- You are suing them
- Where the lawsuit is (which county)
- The case number
- There may be serious consequences if they do not act
- The deadline to respond
- What to do if they want to take part in the case

☐ Copy of Complaint, Motion, or Petition

This tells the court and the other party what you want.

☐ Copy of Documents and Required Notices

- Other legal papers that you filed with the court, for example:
 - Notice of Filing Confidential Information
 - Motions, Declarations and Orders for Temporary Relief
- Notices that the court gives you when you file, for example:
 - Notice re: Parent Education and Mediation
 - Notice about Health Insurance
 - Notice of Statutory Restraining Order
 - Discovery Notice

There are many types of lawsuits. In some cases, there may be other legal papers that you should serve. Check with your local court to make sure you have everything you need.



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4. The server delivers the papers.

If you are having a friend or family member serve the other party, give them this guide. Make sure they read about how to serve, and proof of service.



A. Personal Service

How: The server hand-delivers the papers to the other party, face to face. This is the best way to serve an individual.



Where: Personal service can be done at any place, at any time, when both the server and the served party are present. The other party can be served in Oregon or any other state, as long as the server is a resident of Oregon or the state where service happens.

What if the other party refuses to take the papers?

If the server hands the legal papers to the other party, service is complete. The other party has been served if they know they were handed legal papers, even if they refuse to take the papers, rip them up, or drop them. It could be helpful for the server to say, "I am handing you legal papers."

What if the other party is not home, but someone else is?

See "Substitute Service" below.

B. Substitute Service

The server can give the papers to someone who lives with the other party. **There are 2 steps!**

Step 1. The server goes to the other party's home, and gives the papers to someone who:

- lives in the other party's home **and**
- is at least 14 years old.

Tip. It is helpful for the server to get the name of the person who takes the legal papers.

Step 2. the server **must mail a second copy** of the service packet to the other party:

- at their home address,
- by regular first-class mail, and
- with a statement about substitute service (date, time, and place it happened).



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Note: Substitute Service by Sheriff. If you use the sheriff's office, they will mail you a copy of the proof of service. **Read it.** If the sheriff served someone who lives with the other party, **the sheriff will NOT mail a second copy.** You need to find someone to mail a second copy for you. Include a copy of the sheriff's proof of service form with the mailing. The person who mails the second copy must also fill out a "proof of service" form.

C. Service by Mail

Service by mail is tricky. If any steps are missed, service is not valid. You must have someone else physically mail the papers. Standard mail rates will apply.

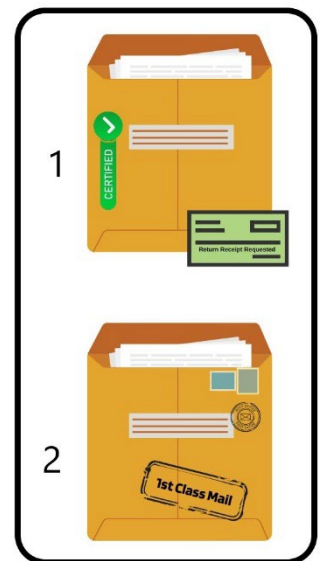
Prepare **two sets** of service papers for your server. The server must mail the papers in 2 separate envelopes to the other party's home or mailing address:

1st Envelope

- Certified mail or registered mail or express mail, **and**
- With return receipt requested

2nd Envelope

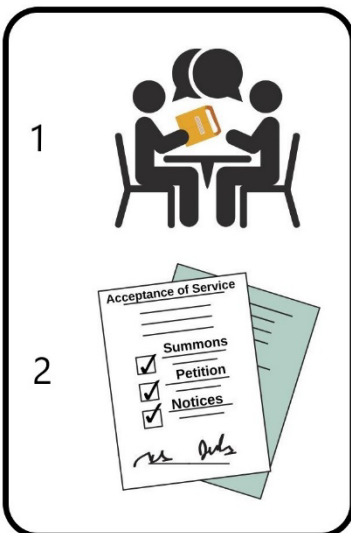
- By regular first-class mail



Service by mail is **only valid if the other party signs the return receipt.** If anyone else signs (roommate, spouse, etc.), the other party has NOT been served. The signed return receipt must be filed with your proof of service.

D. Acceptance of Service

Can the other party agree to take the papers from me?



Yes. You can mail or give the papers to the other party if they agree to sign an Acceptance of Service form. It does not need to be notarized.

Give the other party all the papers listed in Section 3 above, including the copy of the Summons (or Order to Show Cause). Either party can file the Acceptance of Service form with the court. It is your responsibility to make sure it gets filed.

Note: Signing the Acceptance of Service does not mean the other party agrees to what you want. They can still file a Response to tell the court they disagree.

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5. Tell the court about the service.

For your case to continue, you must tell the court the other party was served.

What must be filed so the court knows that service happened?

- Proof of Service form (also called Certificate of Service)
- Original Summons
- Signed return receipt (if Service by Mail)
- 2nd Proof of Service Form (if substitute service by more than one person)



Where can I get the proof of service form?

If you got a forms packet from the court, the "Certificate of Service" is often included. You can also find it online or get it from your court. If you use the sheriff or a private process server, they may have their own form and will mail you a completed copy.

Who fills out the form?

The server fills out the proof of service. The proof of service must include:

- who was served;
- the date, time, and place of service;
- a list of what papers and notices were served; and
- if the server is not the sheriff, they must give their name, address, and phone number.



Note - Substitute Service: The proof of service must include the date the 2nd set of papers was mailed to the other party. You may need to file two "proof of service" forms.

Who files the proof of service?

You or the server can file the proof of service with the court. The **original Summons** must be attached. If you used the sheriff or a process server, they may file the proof of service for you. It is your responsibility to make sure it is filed.

Is there a deadline to file the proof of service?

Yes. File the proof of service as soon as possible. If it is not filed within 63 days of filing your Petition, the court may send you a notice of dismissal. Dismissal means your case will be closed. Check with your local court for information about deadlines.

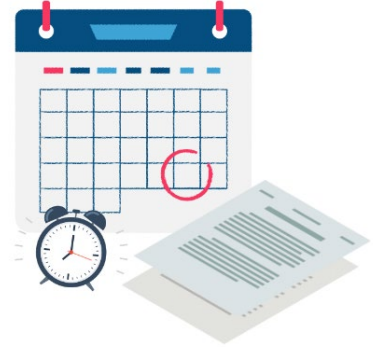


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6. After service: The other party has a deadline to respond.

The other party has a deadline to respond. The deadline is based on how and when they were served. The deadline is in the Summons or Order to Show Cause.

If the other party does not respond on time, you can file papers to ask the court for a default order and judgment. A default order means that the other party has not filed papers with the court by the deadline. Refer to your instructions, your local court, or a lawyer for help with the next steps.



The court will accept a late response from the other party if the court has not issued a default order in your favor.

7. Service Challenges

Find information about these scenarios in **Guide to Service Part 2: Tackling Challenges**.



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What if the other party lives in another country? Page 2 - 3



What if the other party is in the military? Page 3



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Guide to Service Part 2: Tackling Challenges

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INSIDE:

How to serve legal papers in family law cases when the other person in your case is:

- In jail or prison
- In the military
- In another country
- Unable to be served



Note: This is a supplement to the “Guide to Service Part 1: The Basics.”

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What if the other party is in jail or prison?

If the other party is in jail or prison, contact the [correctional facility](#) or the sheriff's office in the county where the facility is located to find out how to serve legal papers to the person. Each facility has its own rules.

Questions you can ask:

- Is there a fee? If yes:
 - Will you accept my fee waiver from the court?
 - Do you need a copy of the fee waiver?
- How do I send the papers to be served?
- Do I need to include an inmate ID number?
- Do I need to send a proof of service form?
- How will I get the proof of service?



Note. The sheriff may have their own proof of service form, and they may file it with the court without telling you. Contact court records, the correctional facility, or the sheriff to find out if proof of service was filed. **It is your responsibility to make sure it gets filed.**

Resources:

- Contact information for all Oregon sheriffs: www.oregonsheriffs.org
- Contact information for all Oregon prisons: www.oregon.gov/doc

What if the other party lives in another country?

If the other party lives in another country, it is best to get help from a lawyer. Other countries have different laws about how to properly serve legal papers from another country, such as required translation of the papers being served. International treaties may apply, and some countries do not allow certain methods of service.



If you don't know where the other party can be personally served, you may be able to apply for alternative service. Refer to Appendix D.

Resources:

- Information from the U.S. State Department: travel.state.gov/content/travel/en/legal/travel-legal-considerations/international-judicial-assistance.html

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- Oregon State Bar: 800-452-7636, www.osbar.org/public/

What if the other party is in the military?

The same methods described in the “Guide to Service Part 1” can be used for a servicemember. However, there can be extra challenges when the other party is in the military:

- It may be difficult to locate the other party.
- The other party is entitled to delay the case if they are on active duty, in training, or about to deploy.

The Service Members Civil Relief Act (SCRA) outlines the protections for service members. For more information, visit the sites listed below. The other party can waive their right to a stay of proceedings under the SCRA.



Because of these challenges, it is a good idea to contact a lawyer licensed to practice law in Oregon.

Resources:

- Oregon State Bar, Military Assistance Panel: osbar.org/public/ris, 800-452-7636
- U.S. Department of Justice: justice.gov/servicemembers/servicemembers-civil-relief-act-scra
- Servicemembers Civil Relief Act (SCRA) website: scra.dmdc.osd.mil/scra
- Waiver of Stay of Proceedings form: Check with your local court

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What if I can't find the other party or the other party is avoiding being served?

If none of the standard methods of service work, you can ask the court for permission to use a different method of service. This is called "alternative service."

What is Alternative Service?

If none of the standard methods of service work, you can ask the court to let you use a different method of service. **You must have a judge's permission in advance.** Some different methods are listed below.



When can I ask the court about alternative service?

Every party has a right to participate in the court process. Service is a critical step in a lawsuit. The court expects you to take steps to find and serve the other party, even if it has been years since you talked to them.

When you ask to use alternative service, the court wants to know what you have done to get the other party served, and why it hasn't worked. Before you ask the court to let you use alternative service, you should:

- Call, email, or message the other party using the contact information you have
- Contact the other party's employer
- Contact the other party's friends and family
- Search court records and the internet

The court may ask you to hire a process server who can search public utility or DMV records.

How do I get the court's permission?

File a Motion and Declaration to Allow Alternative Service. Contact your court for information about local procedures. **Note:** You still must have someone else "serve" the other party, even if you have permission for an alternative method.

In the Motion and Declaration, you must explain:

- What alternative method of service you want to use,
- Why this method is the best way to give the other party notice about the case,
- What efforts you have made to find other party, **and**
- Why service was unsuccessful.

Depending on your local court's procedure, you may be required to file a proposed order

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for the judge to sign, or you may have to appear before the judge to answer questions about your efforts to find and serve the other party.



If a default order has not been granted and you learn where the other party can be served, you must attempt a standard method of service.

What are the types of alternative service?

1. **Posting.** The server posts **notice** of the case on a bulletin board in the courthouse, and sometimes in another public place where the other party will see it. The judge will decide how long the papers must stay on the bulletin board. Read the order carefully and do exactly what it requires.

Posting in the courthouse is free.

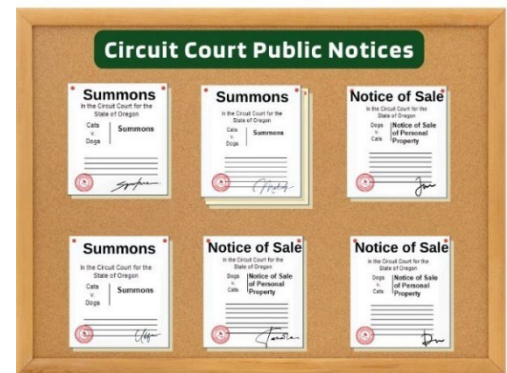
“**Notice**” means that the server posts true copies of:

- Summons (or Order to Show Cause)
- Petition or Motion
- Other papers ordered by the judge

Proof of Service: After the posting period has passed, the person who posted the papers must fill out and file a proof of service form, listing who they are, what papers were posted, and the date and location of the posting. The person who posts the papers cannot be the party who filed the lawsuit. You or the server can file the proof of service form, but it is your responsibility to make sure it is filed.

2. **Publication.** You pay a newspaper to publish a notice about the case. Usually, the notice must be published once a week for four weeks. The newspaper must be:

- accessible to the public, **and**
- based in the county where the case is pending, or where the other party lives.



The judge will approve what newspaper should be used. If the court allows this method, contact the newspaper to publish the Summons. Use the Summons provided in the

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packet for "Summons for Service by Publication." The Summons must list the first date of publication.

Newspapers charge a publishing fee.

Proof of Service: When the publishing period is over, you must get a declaration from the newspaper stating that the Summons was published and for how long (on which dates). Many newspapers have their own form but there is also a court form available.

It is your responsibility to make sure this proof of service is filed with the court.

3. **Electronic service.** Your server sends notice of the lawsuit by email, text message, fax, or posting to a social media account. If you ask the court for permission to use electronic service, your declaration should say if the other party has recently used the email address or cell phone number, or if they have an active social media account.



Content of the electronic notice. The message must have this information in a spot where it is easy for the other party to read first:

- case name,
- case number, and
- name of the court where your case is filed

For example, in an email, those details should be in the subject line. For a text message or social media post, they must be in the top lines of the message or post. Copies of the court papers must be attached to the email, text, or social media post, and the other party must be able to open and read the documents.

Proof of Service: Have your server complete and file a proof of service form. You can attach screenshots or images to show that a text, email, or instant message was sent.

If you later learn that the other party did not personally receive the message, you must file an amended proof of service to let the court know.

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4. **Mail.** Notice of the lawsuit is made by mailing two separate service packets to the other party's post office address, one by first class mail and the second by either certified, registered, or express mail with return receipt requested. The court may specify a response time. This method may be ordered in combination with the other alternative methods described above.

Resources

Forms for Alternative Service Method Request:

courts.oregon.gov/forms/Documents/EntirePacket6A.pdf

Oregon Newspaper Publishers Association: orenews.com/legal-notice-statement

