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Research Guide – Service of Summons and Complaint

As adapted from the San Diego County Public Law Library Research Guide

https://sandiegolawlibrary.org/wp-content/uploads/wpmc-trash/2013/04/Service_of_Summons_and_Complaint.pdf

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Disclaimer

The information in this research guide is intended to assist patrons with their legal research and is in no way intended to replace the counsel of an attorney. This resource is not comprehensive; you may need to do additional research and all references should be checked for accuracy reflecting changes to the law since this creation of this guide. Any decisions about how to proceed must be determined by the patron. The library staff can recommend and refer you to online and print resources that will help you find answers to your law-related questions. The staff at the Law Library for San Bernardino County cannot explain or interpret the law itself and we are not permitted to give legal advice.

Who May Serve the Summons & Complaint? A summons [and complaint] may be served by any person who is at least 18 years of age and not a party to the action. (California Code of Civil Procedure §414.10). **A plaintiff cannot** serve the summons and complaint him or herself.

Different Methods of Serving:

1) 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).

2) 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.

- 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. (*California Code of Civil Procedure* §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. (*California Code of Civil Procedure* §415.20(b)) You should serve and file a declaration of due diligence with the proof of service (see *West's California Code Forms* (6th ed.), *Civil Procedure* §415.20(b), Form 1 at KFC 68.W5; *California Forms of Pleading and Practice*, Service of Summons §518.76 at KFC 1010.A65 C3).

3) 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).

4) 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 to the defendant (*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* (13th ed.) at the Reference Desk; *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.

5) 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 *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.
- *Plaintiffs 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

For information regarding 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) please ask a Reference Librarian for assistance.

Judicial Council Forms can be located online at <http://www.courts.ca.gov/forms.htm> or in print format at the law library.

KEY RULES

For additional information about applicable rules of practice, timing requirements, filing and service requirements, format requirements, hearing requirements, checklists and other pertinent documents related to pleadings, motions, requests, notices, and applications in Selected Southern California courts (Including San Bernardino County) please refer to the *Southern California KeyRules 2008* published by West.