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Rural Law Center of New York, Inc.

## **Service by Publication in New York: Divorce Actions**

**Note:** *A packet of divorce-related forms with instructions is available at your local County or Supreme Court, or at [www.nycourts.gov/litigants/divorce](http://www.nycourts.gov/litigants/divorce). That packet should be used in conjunction with these instructions, because these instructions relate to the service requirement of a divorce action. You should review the entire divorce packet first, and familiarize yourself with the service requirement specifically. Service by publication is an alternative form of service that will lengthen the process of obtaining a divorce and will likely increase your costs. All efforts to find your spouse should be made before resorting to this method of service.*

### **1. What is “Service”?**

“Service” is the delivery of a summons or other legal paperwork to a party in a lawsuit. Service is completed upon proper delivery to the party and must be delivered according to specific procedures set forth in New York state law. Typically, a summons is personally delivered to a defendant in a lawsuit. This is the preferred method of service because other methods of service may require special permission from the court. Serving someone by publishing the summons in a newspaper is one of the special methods that requires permission from the court, and is only available where the plaintiff cannot find the defendant after making diligent efforts to do so.

### **2. Planning for Service upon the Defendant:**

You, as plaintiff in the divorce action, will have 120 days from the date of filing a summons with the County Clerk to serve that summons on the defendant (Form UD-3 in the Uncontested Divorce Packet). If you fail to serve the defendant within this time period, your divorce action may be dismissed. This is why it is important to determine whether you will be able to locate the defendant *before* filing. If you do not know where the Defendant is located, you must first make efforts to find him or her. You should document all efforts, because later, when you ask the court to allow you to serve the defendant by publication, you will need to show that you tried to find the defendant and could not.

### **3. Service when you cannot find the Defendant:**

When you cannot find the defendant, the court may permit you to serve the defendant by publishing the summons in a newspaper instead of serving the

summons personally upon them. The intended result is that the defendant will either read that newspaper or someone who knows the defendant will read the newspaper and then notify the defendant about the summons. This method is unlikely to provide notice of the pending action, but when you cannot find the defendant the court should allow you to use this method as a last resort.

#### 4. Procedure for Service by Publication:

This is a two-step process. First you must get the court's permission to serve by publication, and second you must carry out the service according to strict guidelines.

##### *Step One: Getting the Order*

a. Before completing any paperwork, you should begin by attempting to locate your spouse. Note and record all failed attempts; you will need to document those attempts later for the judge. Try sending a letter, calling mutual acquaintances, and contacting any known family. Send a letter to the defendant's last known address, and note if the letter is returned to you or if you never hear back. Send the letter from the post-office and use certified mail with return receipt requested. If you find out where your spouse is located, even if it is in another state, you will have to serve them personally. If you are unsuccessful in all of your attempts, then you may ask the court to allow you to serve your spouse by publication.

b. Before filing any divorce paperwork with the County Clerk, you need to go to your County Court Clerk's Office to inquire about local procedures. Tell the court clerk that you cannot locate your spouse and are interested in serving them with divorce papers by publication. Bring a completed Summons with Notice with you. If you are low-income, tell the clerk that you will not be able to afford newspaper fees, and that you would like to have the summons placed in the newspaper for no charge. The clerk may or may not be able to help you arrange this. Make a list of what the clerk tells you to do.

c. The clerk will likely tell you that you need to apply to a judge for an "order" permitting service by publication. You will have to provide the judge with an unsigned order, and an application (called a "motion") asking the judge to sign the order, accompanied by an affidavit (a sworn/notarized statement) containing facts showing that service could not be made

personally because the defendant could not be found.\* These facts will be based upon your earlier attempts to locate the defendant.

*\*It is unlikely that the clerk will provide you with examples of any of these documents: the motion with affidavit, or the proposed order. You will need to draft these yourself. Samples of these forms, and any other forms discussed in this guide are provided at the end of this guide.*

d. Use the samples included with these instructions to complete the Order and Motion/Affidavit with your specific information, and file them with the County Clerk. You will have to buy an index number at this time, or make an application for waiver of fees if you cannot afford to purchase the index number. Your divorce case has not yet begun at this point, but you will use this same index number throughout the future divorce proceedings.

### *Step Two: Serving by Publication*

a. After the order is signed by the judge and issued to you, you may commence your divorce action by filing your first round of divorce paperwork with the County Clerk. Make sure to file the signed order and the motion/affidavit along with this paperwork.

**NOTE:** *Whenever you file any paperwork, be sure to bring an additional copy with you. Ask to have your copies stamped with “date of entry” and keep everything together in a file. You will need all of these copies later.*

b. Next call the designated newspaper, and explain to them that you have a summons and a notice\* that you want to publish. They will give you their procedure and costs for submission. This may cost up to several hundred dollars. *(If the judge has also granted you “poor person” status to waive the court’s filing fees, you may also ask the newspaper to waive or adjust the publication fees. This is entirely up to the individual newspaper, but some have been known to waive the fees)* The first publication of the summons must be made within thirty days after the order was granted. Service is complete on the twenty-first day after the date of first publication. The summons must be published in each of those three weeks.

**NOTE:** *A notice must be published with the summons. A sample of the notice is included with the other sample forms at the end of this guide.*

b. You will need to get an affidavit of service from the printer/publisher of the newspaper. This is a sworn statement saying that the summons was printed. A sample affidavit is provided with the forms at the end of this

guide. However, talk to the newspaper staff to find out who has the authority to sign the affidavit. The affidavit of service will be your proof that the defendant was served by publication, and should be filed with your second round of divorce paperwork.

**End of Instructions, proceed to Model Forms below.**

At an I.A.S. Part of the Supreme Court of the State of New York, held in and for the County of \_\_\_\_\_, at the Supreme Courthouse, \_\_\_\_\_ (city), New York, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

P R E S E N T:

HON. \_\_\_\_\_  
Justice.

-----X

Index No. \_\_\_\_\_

\_\_\_\_\_ Plaintiff,

**ORDER FOR SERVICE  
OF SUMMONS BY  
PUBLICATION**

-against-

Assigned Judge \_\_\_\_\_

\_\_\_\_\_ Defendant.

-----X

On reading and filing the motion and affidavit of the plaintiff sworn to on \_\_\_\_\_, and it satisfactorily appearing therefrom that service of the summons by publication on defendant \_\_\_\_\_ is authorized by Section 315 of the Civil Practice Law and Rules, it is

ORDERED that the summons in the above-entitled action be served on defendant \_\_\_\_\_, by publishing the same together with a notice of the object of the action in the \_\_\_\_\_, which is hereby designated as the most likely to give notice to the defendant, one in each of three (3) successive weeks, the first publication to be made within thirty (30) days after the granting of this order; and it is further

The Court being satisfied that a place where the defendant probably would receive mail cannot with due diligence be ascertained, it is

ORDERED, that pursuant to Rule 316(b) of the Civil Practice Law and Rules the mailing of copies of the summons and notice to the defendant be dismissed with.

Dated: \_\_\_\_\_

E N T E R .

\_\_\_\_\_  
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_  
-----X

Index No. \_\_\_\_\_

\_\_\_\_\_ Plaintiff,

-against-

**MOTION FOR SERVICE  
BY PUBLICATION  
AND AFFIDAVIT**

\_\_\_\_\_ Defendant.  
-----X

STATE OF NEW YORK )  
COUNTY OF \_\_\_\_\_ ) ss:

Pursuant to Section 315 of the Civil Practice Law and Rules, the undersigned moves for service by publication. The address of the party to be served is unknown and cannot be ascertained by reasonable diligence, and cannot be served by any other prescribed method. Any real or personal property of the party to be served in \_\_\_\_\_ County is not at issue.

The undersigned respectfully requests that this court order service by publication for three successive weeks in the \_\_\_\_\_, a newspaper of general circulation in the county where the action is pending.

The undersigned, being duly sworn, states as follows.

1. I have not seen, heard from, nor had contact with the party to be served since approximately \_\_\_\_\_.

2. I have been searching for the other party since \_\_\_\_\_.

3. On \_\_\_\_\_, I sent a letter to the party's last known address of \_\_\_\_\_.  
It was returned to me as not deliverable on \_\_\_\_\_.

4. Other attempts to locate the other party include:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. I do not know the whereabouts of the other party.

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Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Plaintiff

The above named plaintiff personally appeared and made oath that the foregoing statements voluntarily made and signed are true.

Date: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**Notice Accompanying Summons Publication**

To \_\_\_\_\_:

The foregoing summons is served upon you by publication pursuant to an order of the Supreme Court of the State of New York, County of \_\_\_\_\_, dated \_\_\_\_\_, and filed in the office of the clerk of the County of \_\_\_\_\_ at \_\_\_\_\_, New York.

The object of this action is to obtain judgment against the defendant for an absolute divorce, that the bonds of matrimony between the plaintiff and the defendant be forever dissolved and such other, further and different relief as may be just and proper.

Dated: \_\_\_\_\_

\_\_\_\_\_, New York

Yours etc.,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_  
-----X

\_\_\_\_\_ Plaintiff,

Index No. \_\_\_\_\_

-against-

**AFFIDAVIT OF  
PUBLICATION**

\_\_\_\_\_ Defendant.  
-----X

STATE OF NEW YORK            )  
COUNTY OF \_\_\_\_\_ ) ss:

\_\_\_\_\_, being duly sworn, deposes and says:

1. S/he is the publisher [or "printer" or "principal clerk" of the publisher or "foreman" of the publisher or printer] of \_\_\_\_\_, a newspaper published in the City of \_\_\_\_\_, County of \_\_\_\_\_, by the \_\_\_\_\_ company; that the summons in this action with the notice subjoined thereto copies of which are hereto annexed, have been regularly published in the \_\_\_\_\_ once in each of three (3) successive weeks, the first publication being on \_\_\_\_\_, and the last publication on \_\_\_\_\_.

2. The summons, as published, contained on the face thereof the words "Action for a divorce".

Signature \_\_\_\_\_

Name (Print) \_\_\_\_\_

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_