

Oregon Family Law

Guide to Service Part 2: Tackling Challenges

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

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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.”

Caution: The information in this booklet is not legal advice. It is intended for educational purposes only in order 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.

Family Law Cases: Guide to Serving Legal Papers Part 2

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

Family Law Cases: Guide to Serving Legal Papers Part 2

- 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

Family Law Cases: Guide to Serving Legal Papers Part 2

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

Family Law Cases: Guide to Serving Legal Papers Part 2

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.

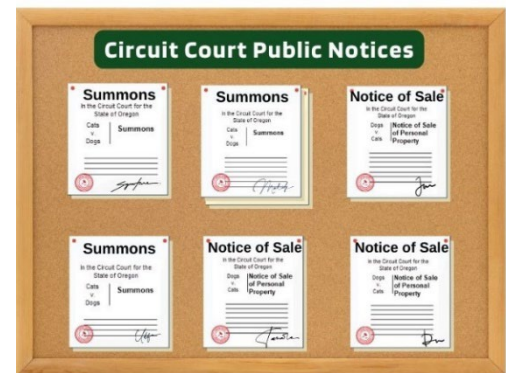
“**Notice**” means that the server posts true copies of:

- 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

Family Law Cases: Guide to Serving Legal Papers Part 2

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.

Family Law Cases: Guide to Serving Legal Papers Part 2

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

