



D. Return of Process:

The sheriff is required to certify upon process or notices the manner, time, and address of service, or if he fails to make service, the reason for the failure, and return the papers without delay. If the sheriff does not return a process or notice in his/her possession with the necessary endorsement thereon, without delay, he/she is liable to the person aggrieved for all actual damages sustained by him/her. A cause of action against a sheriff for making a false return is grounded upon fraud. Any person who willfully makes an improper service of an order requiring the appearance of a debtor, which subsequently results in the arrest of the person ordered to appear, is guilty of a misdemeanor.

E. Diligence in Service:

The sheriff is responsible for reasonable diligence in service of process and may be held liable to the injured party caused by his/her lack of diligence. All attempts of service of process shall be documented, with appropriate notations to indicate why service could not be effected, in order to establish reasonable diligence.

F. Service Instructions:

Process assigned to patrol personnel for service will include specific instructions indicating the person to be served and the manner of service. These instructions shall be followed without deviation and any questions regarding service instructions are to be referred to the Civil Division for clarification prior to service.

1. Personal Service:

- a. Most service of process made by patrol personnel will be by personal delivery to parties named in the action. Service is effected by informing the person that service is being made, generally what the person is being served (such as a summons and complaint, small claims order, et cetera), and delivery of the document. If a court appearance date is noted, that information is told to the person being served at the time of service. When serving a summons, the date of service is to be noted on the face of the copy served. Errors in spelling or address information shall be noted after determining that the person being served is the person intended to be served. This can usually be determined by discussing the general contents of the process with the person. If a doubt exists as to service on the person encountered, service on the person is discretionary and the facts or conclusions leading to the decision reached shall be documented.
- b. Often, personal service is made upon an individual either under a fictitious name or on behalf of some entity, such as a business.

Services of these types will be noted in the service instructions and the person being served is to be informed of the manner in which service is being made and the capacity in which he/she is being served. If a specific person is not named in the service instructions, service is to be made upon a person legally designated to receive process. Whenever possible the capacity or title of the person sought to be served will be indicated in the service instructions. When effecting service of this type, obtain and note the full name of the person served and also any difference in title from that indicated.

2. Substitute Service:

- a. If personal service cannot be made after due diligence (normally a minimum of three attempts, at three different times, on three different days), service may be made to the person to be served by leaving the papers at his/her dwelling house, usual place of abode, or usual place of business in the presence of a competent member of the household, or a person apparently in charge of such business, as the case may be, who must be at least eighteen (18) years of age and be informed of the general nature of the papers. In addition, a copy of the papers thereafter must be mailed to the person to be served at the place of delivery.
- b. Since substitute service has to be anticipated and copies necessary for mailing acquired in advance, do not make substitute service unless the service instructions indicated that service may be made in that manner. If substitute service is to be made as indicated in the service instructions, at least three service attempts must be documented as described in the preceding paragraph. On the third attempt service may be made as previously described. Note the full name and relationship or title of the person served and the mailing address where the copies were left. The mailing requirement will be completed by the Civil Division staff. Various types of process have procedural exceptions in using substitute service and any variations will be indicated in the service instructions.

3. Service on Minor Under 18 of Juvenile Citation or Notice:

- a. Personal service is preferred but service on a minor under the age of 18 may be made by delivery of a copy of the process to his parent, guardian, conservator, or similar fiduciary, or if no such person can be found with reasonable diligence, to any person having the care or control of such minor. Service of other types of process must still be by personal service unless the minor is under the age of twelve (12) in which case the preceding applies.

G. Service Procedures:

1. Review instructions to determine who is to be served, the manner of service (personal service, substitute service, service on behalf of, et cetera), the location for service, and if there are any time or date limitations on service. Do not effect service after the date shown as the last date for service.
2. Effect service as instructed by informing the person being served that he/she is being served, naming the document, and the capacity in which he/she is being served when applicable (owner of business, custodian of records, et cetera). Advise him/her of any noted appearance dates, and when serving a summons, insert the date of service on the face of the copy served in the stamp provided. If the service instructions indicate that service can be made on more or other than one person (usually indicated by "serve either..." or something similar), remember that service of one document can only be made on one person. Indicate on the trip ticket who was personally served.
3. Fill out the trip ticket noting your name as the serving deputy, the date and time of service, and the appropriate service location. Correct any misspelled names or incorrect addresses, and note the service address or location if it is not shown on the trip ticket. When required, note the full name (not Mrs. Jones) and title of the person served (example: Cathy Jones, Vice President).
4. Note all service attempts on the trip ticket indicating the date, time, place, and your name. These service attempts are required before effecting substitute service and to show reasonable diligence in service. Note the general outcome of the attempt, such as "no answer", "not home", et cetera.
5. Your authority in serving process is generally not more than that of a private process server. You cannot legally demand a person to identify himself/herself or restrain his/her free movement; and you cannot effect a "traffic stop" to serve process. If a person is, however, legally detained on some other matter, he/she can be served during that detention.
6. Service of levies and garnishments is normally handled by the Civil Division; however, occasionally patrol is instructed to serve these documents. Levies and garnishments are the legal methods by which the Sheriff seizes or attaches the property of a debtor or other person or business under the authority of a court order. Time is of the essence in serving these documents as the Sheriff may be held civilly liable for any loss because of his/her lack of diligence. Explicit instructions will accompany these types of documents and service will be effected as soon as possible or the Civil Division notified if service cannot be effected. The method of service is generally the same as serving other process. Notify the Civil Division immediately following service as there

are additional documents or notices to be mailed within strict time limitations following service. If any instructions are unclear, do not serve the process without first clarifying the instructions and making certain that you understand what you are being instructed to do. These types of services usually include an answer form to be completed by the person or business being served. Do not fill out or sign the answer form for them. It is the garnishee's responsibility to answer the levy notice.