

# Serving Court Papers



This information has been adapted for the following New York Counties: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, and Wyoming.

## Why must I serve court papers?

To start a case in Family Court, you must file a **petition** (pe-TI-shun). A petition is when you ask the court to make a decision about something. The person who starts a case is called the **petitioner**. The person on the other side of the case is called the **respondent** (re-SPON-dent). After you file a petition, the respondent must be told about the case.

You do this by having the court papers handed directly to the respondent. This is called **personal service**. It can also be called giving the respondent **notice** of the case. The court has very strict rules about how to serve papers. If papers are not served correctly, your case will not move forward.

**Please check with your local Family Court Clerk on what type of service is needed for your petition.**

## Who can serve the papers?

You are NOT allowed to personally serve papers in your own case. Any person 18 years or older may serve papers, except the petitioner or respondent in your case. The person can be a friend, relative, or anyone else. You can also hire a professional to serve the papers for you. They are listed in the phone book under Process Servers. The Office of the Sheriff will also deliver papers for a fee.

## When can papers be served?

In general, all papers can be served any day of the week except Sunday. They must be served at least eight days before the court date.

A petition that includes an order of protection can be served any day of the week, even Sunday, at any time. It must be served at least 24 hours before the court date.

Certain papers, such as an order to show cause, might include specific directions from the judge about when and how they must be served. You should follow these directions exactly.



## Can I start a case if I do not know where the respondent is?

Yes. You will have time to try to find the respondent or hire a process server to look for the respondent and serve the papers for you.

Need more help? Contact LIFT: 1-800-696-8629 • [LIFTonline.org](http://LIFTonline.org)

## What happens if I cannot find the respondent?

If the court date comes and you have not been able to serve the papers, you should give the judge a written list of all of the ways you tried to serve the respondent. The list should include dates and places where you tried to have the respondent served. Places can include the home, the place of work, or the school of the respondent, or any place else where you think the respondent may be. The judge may set a new date for the case and ask you to keep trying. Or the judge may say you can serve the papers in another way. This is called **alternate service**.

## What are other ways to serve papers?

Alternate service might be:

- Serving a person who works with the respondent who will give the papers to the respondent
- Serving someone at the home of the respondent who will give the papers to the respondent
- Placing an advertisement in a newspaper
- Attaching the papers to the front door of the respondent

The judge can tell you how to serve the respondent. You must serve the respondent the way the judge tells you to. **You cannot serve in any of these ways if the judge does not give you permission.**



When you use alternate service, you should also send a copy of the papers by **certified mail / return receipt requested** to the last residence you can find for the respondent. The post office will tell you how to do this. This is very important. If the respondent does not show up at the next court date, you can give the court a copy of the certified mail receipt signed by the respondent to prove that they received the papers. This proof, combined with one of the above ways of serving, will allow your case to go forward.

## What is an Affidavit of Service?

An **Affidavit of Service** is a piece of paper that shows the court that you had the papers served in the correct way. The affidavit must include the following information:

- When the papers were served
- Where the papers were served
- Who the papers were served on
- A physical description of the person the papers were served on
- The name and address of the person who served the papers



If you serve the papers by mail, the affidavit must say where the papers were sent from and where they were sent to.

If the papers are sent by certified mail, you must attach the certified mail receipt to your affidavit.

The Affidavit of Service must be **notarized**. This means the person who serves the papers must sign the affidavit in front of a notary public.

Please note: The person being served does not sign the Affidavit of Service.

## What do I do with the Affidavit of Service?

You must give the ORIGINAL Affidavit of Service to the judge when you go to court. You should also make a copy of the affidavit and keep it with the rest of your court papers.

This affidavit is the only proof the court will accept that the respondent was served. It shows the court that the respondent knows about the case and knows what day he or she is expected to be in court. Without the original Affidavit of Service, your case will not go forward.

## What is a notary public and where can I find one?

A **notary public**, or notary, is someone who watches people sign their names on official papers and gets proof that these people sign their real names.

Some notaries have offices near courthouses. Many banks, law offices, and drug stores have a notary. A notary may charge a fee of up to \$2 for each signature.

## How do I serve an order of protection?

To serve an **order of protection**, go to the police agency closest to where the respondent lives or to the Office of the Sheriff in the county where the respondent lives. A police officer or sheriff will serve the order of protection papers for you for free. Ask the police officer or the sheriff for the special affidavit that they have to sign.



Please note that a temporary order of protection does not work until it has been served.

*This document should not take the place of a consultation with a lawyer. LIFT encourages all individuals involved with the Criminal and Family Court systems to consult with a lawyer.*

## What if I was not served properly?

If you were not served properly, but you know when the court date is, you have a few choices.

- If you are ready to go forward with your case, you may go to the court on the scheduled date and tell the judge. The judge may ask you to accept service in the courtroom. The judge will hear your case on that day.
- If you are not prepared, you may go to court on the scheduled date and ask the judge to set another court date at a later time. The judge may ask you to accept service in the courtroom.
- If you want to be served in the right way, you can go to court and tell the judge that you were not served properly. You can ask the judge to have a hearing about whether or not you were served properly. If the judge decides that you were not served in the right way, the judge might order that you be served again.
- If you are sure that you were not served in the right way, you do not have to appear, or show up, in court. But just to be safe, if you do not go to court on a scheduled date, check the court file. You want to be sure that no decisions were made when you were not there.

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