



# SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

## HOW TO SERVE A DEFENDANT (SMALL CLAIMS) - INFORMATION

### How to Serve a Defendant with a Small Claims Lawsuit

After a Small Claims case is filed, the plaintiff must make certain that all defendants know about the lawsuit. This must be done in accordance with the law, otherwise the plaintiff's case will be dismissed or delayed. The correct way to notify the defendant(s) about the lawsuit is by performing what is called "service of process." This means delivering a copy of the lawsuit to all defendants. The plaintiff cannot do this him or herself; the lawsuit must be served by someone who is at least 18-years-old and is not a party in the case.

In a small claims lawsuit, there are three ways in which a defendant may be served:

1. Direct personal service.
2. Substituted service.
3. Certified mail sent by the small claims clerk.

Service by publication or posting is **not** permitted in Small Claims.

Below is information about each type of service. Also see the Locating and Serving a Defendant Information (SDSC Form #SC-057) for information and tips for locating a defendant for service.

### 1. Direct Personal Service of the Lawsuit on the Defendant

Direct personal service is when someone – NOT a party to the case – personally delivers the documents to the defendant.

Important note: The defendant **must** be served with the lawsuit within the boundaries of the state of California. **Two exceptions** apply to this requirement that allow for service outside the state of California: Lawsuits involving vehicle accidents in California in which the owner or operator of the vehicle resides out-of-state, and individuals who live in another state but currently own real property in California, and the lawsuit relates to the real property.

#### Who May Serve the Lawsuit?

The lawsuit must be served by someone who is at least 18-years-old and not a party to the lawsuit. This includes a friend, a co-worker, or a relative. Another option is to hire a registered process server to serve the lawsuit. The National Association of Professional Process Servers provides listings and information regarding process servers throughout the United States. Information may be obtained at [www.napps.org](http://www.napps.org).

#### Time Frame

If the defendant resides in the county where the lawsuit is being heard, service must be completed **at least 15 days** before the hearing. If the defendant lives outside the county where the lawsuit is being heard, service must be completed **at least 20 days** before the hearing.

#### Proof of Service

After service is completed, the server must complete a Proof of Service (SDSC Form #SC-104), detailing the date, time, and address where the lawsuit was served. The server must sign the Proof of Service form and return it to the plaintiff or directly to the court. The Proof of Service must be filed (mailed or submitted directly to the business office) with the court at least five days before the small claims hearing.

### 2. Substituted Service of the Lawsuit on the Defendant

Substituted service allows the plaintiff, under certain circumstances, to serve another person instead of the defendant. In small claims court, the substituted service method may be used without first attempting to directly serve the defendant.

#### Who May Serve the Lawsuit by Substituted Service?

A registered process server or anyone who is at least 18-years-old and is not a party to the action may serve the lawsuit by substituted service. This person is referred to as the "server" in the information below.

Below are instructions for serving by substituted service where the defendant resides, where the defendant works, and where the defendant holds a private post office box. These instructions must be followed carefully.

#### Substituted Service Where the Defendant Resides

Substituted service may be done at the defendant's place of residence by leaving the documents with a person at least 18-years old who lives at the residence with the defendant. The server must inform the person that he or she is serving the lawsuit. The server must attempt to obtain the name of the person, or at least obtain a description of the person to whom he gives the documents. This information must be included in the Proof of Service, discussed below. After the documents are served, the server must mail a copy of the lawsuit to the address where he or she provided substituted service. The copy must be sent by first-class mail (it does not need to be sent by registered or certified mail), and addressed to the person or entity that is being served.

#### Time Frame

If the defendant resides in the county where the court hearing is taking place, substituted service is effective only if the service (meaning, leaving the papers with the third party who resides with the defendant at the defendant's place of residence and mailing an additional copy to the address where the lawsuit was left) is completed **at least 25 days** before the hearing. If the defendant resides outside the county where the lawsuit is being heard, service must be completed **at least 30 days** before the hearing.

#### Proof of Service

After service is completed, the server must complete a Proof of Service (SDSC Form #SC-104), detailing with whom he or she left the lawsuit, and when and where he or she mailed the copy of the lawsuit. The server must sign the Proof of Service and return it to the plaintiff or directly to the court. The Proof of Service must be filed (mailed or submitted directly to the business office) with the court at least five days before the small claims hearing.

### **Substituted Service Where the Defendant Works**

The server may conduct substituted service at the defendant's place of work. The papers may be left with someone at the place of work who is at least 18-years-old, and who appears to be in charge at the place of work. The server must inform the person that he or she is serving the lawsuit. The server must attempt to obtain the name of the person or at least obtain a description of the person to whom he gave the lawsuit. This information must be included in the Proof of Service, discussed below. After the lawsuit is served, the server must mail a copy of the lawsuit to the address where he or she provided substituted service. The copy must be sent by first-class mail (it does not need to be sent by registered or certified mail), and addressed to the person or entity that is being served.

#### Time Frame

If the defendant resides in the county where the court hearing is taking place, substituted service is effective only if the service (meaning, leaving the papers with the third party at the defendant's place of work, and mailing an additional copy to the address where the lawsuit was left) is completed **at least 25 days** before the hearing. If the defendant resides outside the county where the lawsuit is being heard, service must be completed **at least 30 days** before the hearing.

#### Proof of Service

After service is completed, the server must complete a Proof of Service (SDSC Form #SC-104), detailing with whom he or she left the lawsuit, and when and where he or she mailed the copy of the lawsuit. The server must sign the Proof of Service form and return it to the plaintiff or directly to the court. The Proof of Service must be filed (mailed or submitted directly to the business office) with the court at least five days before the small claims hearing.

### **Substituted Service by a Private Post Office Box**

Substituted service may be conducted by serving the lawsuit to the business for which the defendant holds a private post office box. (Substituted service **cannot** be conducted at a United States Postal Service post office box. Service by certified mail, however, may be conducted at a United States Postal Service post office box. See service by certified mail information below.) The server must provide the papers to a person who appears to be in charge at the business, and thereafter mail a copy first-class mail to the address where he or she delivered the lawsuit. The mailing must be addressed to the person or entity that is being served.

#### Time Frame

If the defendant resides in the county where the court hearing is taking place, substituted service is effective only if the service (meaning leaving the lawsuit with the third party at the defendant's private post office box, and mailing an additional copy to the address where the lawsuit was left) is completed **at least 25 days** before the hearing. If the defendant resides outside the county where the lawsuit is being heard, service must be completed **at least 30 days** before the hearing.

#### Proof of Service

After service is completed, the server must complete a Proof of Service (SDSC Form #SC-104), detailing with whom he or she left the lawsuit, and when and where he or she mailed the copy of the lawsuit. The server must sign the Proof of Service form and return it to the plaintiff or directly to the court. The Proof of Service must be filed (mailed or submitted directly to the business office) with the court at least five days before the small claims hearing.

### 3. Serving the Lawsuit by Certified Mail

The third option for serving the defendant is by certified mail. Only the small claims clerk has the legal authority to serve the lawsuit on the defendant by certified mail, and there is a fee for each defendant served. For the service to be valid, the defendant must sign the green certified mail slip when the lawsuit is delivered by the post office. If the defendant does not sign the green certification slip, the plaintiff must serve the defendant by personal or by substitute service. Whether the defendant signs the green slip or not, the slip will be returned directly to the plaintiff from the post office.

#### Time Frame

Service on the defendant is considered complete on the date that the defendant **signs** for the mailing. If the defendant resides in the county where the lawsuit is being heard, service must be completed **at least 15 days** before the hearing. If the defendant lives outside the county where the lawsuit is being heard, service must be completed **at least 20 days** before the hearing. If the defendant signed the green certification slip, the slip must be returned (mailed or submitted directly to the business office) to the small claims clerk at least five days before the small claims hearing. The green slip, signed by the defendant, serves as the proof of service.