

Proof of Service of Petition & Summons

hello divorce.



Proof of Service of Summons and Petition (Form FL-115)

File this form with the court right after you have served the Petition for Dissolution of Marriage or Registered Domestic Partnership (FL-100), Summons (FL-110), Blank Response (FL-120) and Completed and blank Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (FL-105), if you have children.

Explanation:

As the party who filed the Petition and related papers and initiated the case, you are now the Petitioner for the remainder of the case. Your spouse, partner, or the other parent of your child, as the case may be, is now the Respondent. It is the Petitioner's responsibility to make sure the Respondent receives notice of the case. It is not enough to merely mail the papers to Respondent or give the Respondent a phone call telling her or him about the case. You must give notice in a very specific way, by doing what the court calls "serving" the Petition and the Summons. When you filed your papers to start the case, the court clerk "issued" the Summons. Really the clerk did not "issue" anything, but rather "endorsed" the Summons that you prepared by putting a file stamp on it. Until you serve the Petition and the Summons on the Respondent, the Court has no power to proceed in your case or make any orders.

*Here is the kicker. Even if you have properly served the Respondent with the Petition and the Summons, the Court will still have no power to proceed in your case or make any orders **unless there is evidence before the Court that Respondent was properly served with the Petition and Summons.** That is where form FL-115 ("Proof of Service of Summons") comes into play. If service has been properly made on the Respondent, and form FL-115 is correctly filled out and filed with the Court, then the Court will have the power to proceed in your case and make orders. This instructional template will teach you how to properly fill out form FL-115, which, once filed, will enable the Court to move forward with your case and make the orders you seek.*

Important Note: This instructional template will guide you through filling out the form to prove to the Court that service was made in accordance with the law. It is not a comprehensive guide on how to properly serve the Respondent. The law on service can get very complicated and nuanced, especially in instances where the Respondent is deliberately avoiding service. With that said, this template will address some of the basics of how to properly serve the Respondent, even when the Respondent is trying to duck service. If you have questions unique to your situation or are having trouble serving the Respondent through one of the more basic methods outlined below, you can always get in touch with one of the helpful attorneys at HD and/or consult with a registered process server or licensed

investigator. Situations where you do not know where the Respondent normally lives or normally works are not covered at all by this instructional template. You should consult with an attorney if you cannot locate the Respondent and do not know where the Respondent normally lives or normally works.

Tip: If service by mail is not an option (more on this farther down), and if you can afford it, you should consider hiring a reputable registered process server to serve the documents. As part of their fee, the process server will not only serve the documents for you, but will also take care of correctly filling out the proof of service of summons, and may even file it for you. If there are any problems with the proof of service, the process server should correct the mistakes for you and get you a new proof of service. You can find registered process servers by doing an Internet search for registered process servers in the county where the Respondent lives or works, or asking a local attorney for a recommendation. If you do hire a process server, make sure they are registered and reputable. It may cost a few extra bucks, but it is worth it.

Proceeding on your own: If you do not use a registered process server or hire an attorney, and decide to proceed on your own, you should be aware that you cannot go it entirely alone. The person serving the Petition and Summons must be someone who is at least 18 years of age and is not a party to the case. This can be a friend, a family member, the sheriff, or a professional process server. As the Petitioner, you are one of the parties to the case, so you cannot serve the papers. Note also that the person serving the papers is also the person who will be signing the proof of service under penalty of perjury. So the person you choose should be someone who will cooperate with you and be willing to sign the form after service is complete. From here on out, these instructions will use the term “process server” to refer to whoever it is that you have selected to serve the Petition and Summons on your behalf.

The form you will definitely need is the following:

Proof of Service of Summons (form FL-115)

www.courts.ca.gov/documents/fl115.pdf

The forms you may need are the following:

Attached Declaration (form MC-031)

www.courts.ca.gov/documents/mc031.pdf

Notice and Acknowledgment of Receipt (form FL-117)

www.courts.ca.gov/documents/fl117.pdf

Instructions for filling out Judicial Council form FL-115

Page 1

Caption box at the top of the page

Fill in your name, address, telephone number, and email address in the section labeled “Attorney or Party without Attorney.” Where it says “Attorney for (Name):” write “In Pro Per.”

In the box below that begins with **“SUPERIOR COURT OF CALIFORNIA, COUNTY OF”** write in the name of the county in which you filed your case immediately after the word “OF.” Below that fill in the courthouse address and branch name. You will be using the branch and address for the courthouse where family law cases are heard in your county. If there is more than one courthouse that hears family law cases in your county, use the branch for the courthouse where your specific case will be heard. You can look up this information on the court’s website or by calling the court clerk, whose number you will find on the court’s website.

In the next box below, in the space for Petitioner, fill in your name as it appears on the Summons that was file stamped by the court clerk when you filed the Petition. In the space for Respondent, fill in the Respondent’s name as it appears on the Summons.

The next box below reads “PROOF OF SERVICE OF SUMMONS.” To the right of that box is another box where you will fill in the case number. You can find the case number on any of the file-stamped documents you presented to the court clerk when you filed the Petition.

Item 1

Here is where you will check a box next to each document that was served on the Respondent. These include the documents you filed when you initiated the case, as well as some additional documents as outlined below.

This instructional template assumes you have filed a “Petition—Marriage/Domestic Partnership” (form FL-100). If instead you have filed a “Petition for Custody and Support of Minor Children” or a “Petition to Establish Parental Relationship,” you should consult with an attorney, because the instructions below may not apply to your situation. Our friendly HD attorneys are always happy to help with any questions you may have.

Under Item 1, mark box (a) to indicate that your process server has served the “Petition—Marriage/Domestic Partnership (form FL-100), the corresponding Summons (FL-110), and a blank Response—Marriage/Domestic Partnership (form FL-120). Note that your process server is required to not only serve the Petition and the corresponding Summons, but also a blank version of the corresponding Response to the Petition. *For the Petition and the Summons, your process server will be serving file-stamped copies of the versions you filled out and filed at the Court.* For the blank Response, your process server will simply serve a blank version of the document, which can be found here:

“Response—Marriage/Domestic Partnership” (form FL-120)

www.courts.ca.gov/documents/fl120.pdf

Under Item 1, subpart (d), you may need to check additional boxes:

Item 1, box (d)(1): If you were required to file a “Declaration Under Uniform Child Custody Jurisdiction and Enforcement” (form FL-105) with your Petition, then the file-stamped version of that document should also be served on the Respondent, and you should mark box (d), and then mark box (d)(1). You would have filed such a Declaration if your marriage or domestic partnership involves minor children. Your process server will also have to serve a blank version of the document, which can be found here:

“Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act” (form FL-105)

www.courts.ca.gov/documents/fl105.pdf

Item 1, boxes (d)(2) through (d)(6): At the time you serve the Petition and Summons, or within 60 days of serving the Petition and Summons, your process server must serve a preliminary.

“Declaration of Disclosure” on the Respondent (form FL-140), box (d)(2). This Declaration may include the following documents: “Schedule of Assets and Debts” (form FL-142), box (d)(3), “Income and Expense Declaration” (form FL-150), box (d)(4), “Financial Statement (Simplified)” (form FL-155), box (d)(5), and “Property Declaration” (form FL-160), box (d)(6). See our instructional template on filling out the “Declaration of Disclosure” (form FL-140) for more details. If you choose to have

your preliminary Declaration of Disclosure served at the same time as the Petition and Summons, then you should mark box (d), if it has not already been marked, and also mark box (d)(2). Be sure to give your process server a copy of the completed form as well as a blank copy, which can be found here:

“Declaration of Disclosure”

www.courts.ca.gov/documents/fl140.pdf

Note that the completed version will not have a file stamp from the Court, because this document is not supposed to be filed. See our instructional template for completing the “Declaration of Disclosure” (form FL-140) for more information.

If you are having the Declaration of Disclosure served with the Petition and Summons, then you will also need to mark boxes (d)(3)–(d)(6) if any of those forms are part of your Preliminary Declaration of Disclosure. You will have to review your Preliminary Declaration of Disclosure carefully to see which forms were used to prepare it. Be sure to provide your process server with completed versions of each of the forms that are part of your Declaration of Disclosure, as well as blank copies, which can be found here:

“Schedule of Assets and Debts” (form FL-142)

www.courts.ca.gov/documents/fl142.pdf

“Income and Expense Declaration” (form FL-150)

www.courts.ca.gov/documents/fl150.pdf

“Financial Statement (Simplified)” (form FL-155)

www.courts.ca.gov/documents/fl155.pdf

“Property Declaration” (form FL-160)

www.courts.ca.gov/documents/fl160.pdf

Reminder: Since the above forms are being served as part of the Declaration of Disclosure, none of them will have file stamps from the Court. Recall that the Declaration of Disclosure and its accompanying documents are not supposed to be filed.

On the Proof of Service of Summons, check the boxes corresponding to each of the forms that you are having served as part of your Declaration of Disclosure, (d)(3) for the Schedule of Assets, (d)(4) for the Income and Expense Declaration, (d)(5) for the Financial Statement (Simplified), and (d)(6) for the Property Declaration.

If you have filed a Request for Order (form FL-300) at any time prior to serving the Petition and Summons, you may choose to have it served at the same time you serve the Petition and Summons. (See our instructional template on filling out “Request for Order” form FL-300 for more information on filling out and filing a Request for Order.) If you choose to do so, give your process server a copy of the file-stamped Request for Order. Be sure it has the hearing date on it! Also be sure the process server has a blank Responsive Declaration to Request for Order (form FL-320) to serve with the Request for Order. To indicate on the Proof of Service that you had a Request for Order and a blank Responsive Declaration to Request for Order served on the Respondent, you will mark box (d), if it has not already been marked, and then mark box (7). A blank version of the Responsive Declaration to Request for Order can be found here:

Responsive Declaration to Request for Order

www.courts.ca.gov/documents/fl320.pdf

If you taking the opportunity to serve any other required documents, you may write them into the Proof of Service where it says “Other (specify):” and then mark box (d) if it has not already been marked, and then mark box (8).

Item 2

Under Item 2, fill in the address where the Respondent was served. The different methods of service will be covered shortly. For now it is enough to know that for personal service, the address is the location where the documents were hand delivered, and that for service by mail, the address is the location where the documents were mailed. Do not leave this item blank or your proof of service will be invalid.

Item 3

Under Item 3, you are going to indicate the method of service used by your process server.

Personal Service: Mark Item 3, box (a) if your process server hand delivered the documents directly to the Respondent. There is no requirement that the Respondent accept the documents or sign any acknowledgment. Service is valid even if the Respondent refuses to accept the documents and the process server has to drop them at the Respondent's feet, or toss them on a table where the Respondent is seated. As long as your process server lets the Respondent know that Respondent is being served with court papers, you should be okay. If you are marking box (a), ***it is critical that you also write in the date and time of service in the spaces provided on the Proof of Service form.*** Make sure your process server knows about this requirement ahead of time so that she or he can make a note of the time and date of service.

Substituted Service: Substituted service is a form of personal service. Your process server can use substituted service if she or he has tried repeatedly to personally serve Respondent but the Respondent is never home, or refuses to come to the door. Substituted service involves leaving the papers with an adult at Respondent's home or work, and then mailing the same documents to where the papers were left.

There are a few requirements for substituted service that must be carefully followed or substituted service will not be proper:

Substituted service can only be used at a location where the Respondent normally lives or normally works. If you have reason to believe the Respondent no longer lives at a particular location, or only infrequently works there, it is not proper to attempt substituted service at that address. You are of course free to attempt direct personal service anywhere. (Under some limited circumstances, if you only have a mailing address for the Respondent that is not a home or a place of business, you may be able to use substituted service. If you want to try substituted service at a mailing address, you should consult with an attorney as this is not a common method and has quite a few restrictions.)

Another requirement to use substituted service is that the papers be left with an adult. In the case of a business or place of work, the adult must be “apparently in charge.” This does not mean that the person has to be actually in charge. A receptionist who blocks access to anyone else at the office is “apparently in charge” and papers can be left with him or her. In the case of a home, the adult must be a “member of the household.” A member of the household is anyone who lives at the home, including live-in nannies and housekeepers.

Another key requirement is that substituted service cannot be used unless personal service has been attempted with reasonable diligence. Different courts have different standards of diligence, but most courts seem to accept three different attempts on three different days at different times of day. For example, an attempt on Monday in the late evening, on Tuesday in the early morning, and on Wednesday in the afternoon will be considered reasonable diligence by most courts. It is safest, however, to go above and beyond the bare minimum and make at least a couple of additional attempts.

After serving the documents, the process server must mail copies of all the served documents (by first-class mail with postage prepaid) to the same address where the process server made the substituted service.

If your process server used substituted service to serve the documents on the Respondent, mark box (b) under Item 3. Mark box (b)(1) if substituted service was made where Respondent normally works, or mark box (b)(2) if substituted service was made where Respondent normally lives.

Then below box (b)(2), write in the date and time when substituted service was made. Be sure to let your process server know about this requirement ahead of time, so she or he can make a note of the date and time of service.

Below the space for the date and time, you will see a sentence beginning with “I thereafter mailed additional copies...” At the end of that sentence, there is a space to note the date the documents were mailed after being left at the home or workplace. Be sure to note this date as it is easy to miss the spot where this information belongs.

If your process server used substituted service, you must attach a “declaration of diligence” to the Proof of Service. Near the end of this instructional template, you will find directions for creating a declaration of diligence.

At the very top of the page, write in your name in the space provided for the Petitioner, and write in your spouse/partner's name in the space provided for Respondent. Write in the case number on the right in the space provided.

Item 3 continued

Item 3 covers two methods of service by mail.

One method uses a form called "Notice and Acknowledgment of Receipt" (form FL-117). Under this method, your process server mails all the documents to be served (the ones marked as being served under Item 1) to the Respondent along with two copies of form FL-117, partially filled out, and a self-addressed stamped return envelope. If Respondent so chooses, Respondent may complete and sign form FL-117 to acknowledge receipt of the Petition, Summons, and the other documents being served. Respondent does not have to acknowledge receipt. If Respondent does not acknowledge receipt, you will have to serve by another method, but you may be able to request that the Court order the Respondent to pay your costs of service if you have to hire someone to accomplish service.

If you served by "Notice and Acknowledgment," mark Item 3, box (c). Then write in on what date and from where the mailing was made in the spaces provided. Then mark box (c)(1). Be sure to attach a completed Notice and Acknowledgment or Receipt that is signed by the Respondent. At the end of this instructional template, you will find directions for how to fill out the portion of the Notice and Acknowledgment of Receipt that you are responsible for filling out before mailing.

The other method of service by mail can only be used if the Respondent lives outside of California. Under this method of service by mail, your process server mails all the documents to be served (the ones marked as being served under Item 1) to the Respondent, by registered or certified mail *with return receipt requested*. To complete the proof of service you will need the signed return receipt *signed by Respondent* or some other evidence of actual delivery *to Respondent*. If your process server used this method, mark Item 3, box (c). Then mark box (c)(2). Then write in on what date and from where the mailing was made in the spaces provided. *Then be sure to attach the signed return receipt or other evidence of delivery*. Evidence of mailing is not sufficient—you will need evidence of *delivery!*

The Proof of Service form has a space for service by “Other” means. Such other means are not covered by this instructional template. You should consult an attorney if you are unable to successfully serve the Respondent using one of the methods described in Items 3(a)–3(c).

Item 4

Under Item 4, provide the name, address, and telephone number of the process server in the spaces provided. If you are using a friend, family member, or acquaintance who does not regularly serve legal documents, mark Item 4, box (b). A process server who regularly serves legal documents will know whether to mark Item 4, box (a) or box (c). For subpart (d), indicate how much, if anything, you were charged for service.

Item 5

Be sure to mark box 5.

Item 6

Do not mark this box unless the documents were served by a California sheriff, marshal, or constable. If that is the case, you will not likely be preparing the Proof of Service form.

At the bottom of the page, have your process server print his or her name, sign, and date the form. The date is the date the process server signs the form. It does not have to correspond to the date of service.

Make a copy of the Proof of Service of Summons and take the original and your copy to the courthouse for filing. The clerk will file the original and endorse your copy with a file stamp. You are all done! Below are instructions for filling out a “Notice and Acknowledgment of Receipt” as well as instructions for creating a “Declaration of Diligence.”

Notice and Acknowledgment of Receipt (Form FL-117)

If you want your process server to mail the documents to be served with a Notice and Acknowledgment of Receipt as described earlier, you will need to partially fill out the Notice prior to mailing it. You can find the form here:

Notice and Acknowledgment of Receipt

www.courts.ca.gov/documents/fl117.pdf

For caption box at the top of the page (everything above Item 1), fill out the form exactly as you were instructed earlier in this instructional template to fill out the caption box for the Proof of Service of Summons (form FL-115).

Item 1

Under Item 1, write in the name of the Respondent.

Item 2

Under Item 2, write in the date of the mailing. This will be the same date you noted under Item 3(c) in the Proof of Service of Summons (form FL-115).

Item 3

Under Item 3, write in the name of your process server, and then have your process server sign in the space provided.

Item 4

Fill out Item 4 exactly as you filled out Item 1 in the Proof of Service of Summons (form FL-115).

That's it! The rest of the form is to be filled out by the Respondent.

Declaration of Diligence

If your process server used substituted service, you will need to have her or him fill out a declaration of diligence. You can find a form to use here:

Attached Declaration (form MC-031)

www.courts.ca.gov/documents/mc031.pdf

At the top of the page, write in your name in the space provided for the Petitioner, and your spouse/partner's name in the space provided for the Respondent.

At the top of the large empty space provided for the declaration, write "Attachment to Proof of Service of Summons (form FL-115)." Skip a line and then write "Declaration of Diligence Re. Substituted Service." Skip another line and write, "I, [name of process server], declare as follows:". Then skip another line and number your first sentence with the number 1. Write "I am at least 18 years of age and not a party to this action. I have personal knowledge of each fact stated in this Declaration." Begin a new line with the number 2. Write "Petitioner hired me to serve the following documents on Respondent:" Then describe the documents the process server was attempting to serve. Starting on a new numbered line (number 3), begin describing all the process serving attempts made by the process server. Continue using numbered paragraphs as you write out the description. Use one numbered paragraph for each visit. Be sure to include dates, times, and precise addresses for each visit. Be sure to include details of each visit. For example, were all the lights off? Did it appear someone was home? Was there a car in the driveway that matched the description of Respondent's car? Did someone answer and say Respondent was not home? Etc. At the bottom of the form, print the process server's name and have the process server sign and date the declaration in the spaces provided. Under the signature line, mark the box that says "Other" and write in "Petitioner's process server." Be sure to attach the declaration to the Proof of Service.