

## MORE INFORMATION

You can find all the information in this brochure in the Montana Code Annotated (MCA), in section 25-20-Rule 4D (Rules of Civil Procedure). You can find the MCA at your local library, the State Law Library of Montana, or online:

[http://data.opi.mt.gov/bills/mca\\_toc/index.htm](http://data.opi.mt.gov/bills/mca_toc/index.htm)

Below are some other resources that you may find useful in order to properly serve documents in a court case:

- [www.courts.mt.gov/locator/](http://www.courts.mt.gov/locator/) - Find your Clerk of District Court by going to the court locator. Click on your county and it will provide the contact information for your Clerk of District Court. When you file paperwork with the court, you file it with the Clerk of District Court.
- Montana Legal Services Association - [www.MTLSA.org](http://www.MTLSA.org) - MLSA is a program that provides free legal assistance in civil cases to low-income people.
- The State Law Library of Montana - [www.courts.mt.gov/library](http://www.courts.mt.gov/library) - The Law Library allows users access to resources on legal issues (but not legal advice). The librarians are trained in legal research so that they may help you select, locate, and use legal materials that will, hopefully, enable you to answer your own legal questions. You can also find copies of different civil court forms here: [www.courts.mt.gov/library/topic/civil\\_forms.mcp](http://www.courts.mt.gov/library/topic/civil_forms.mcp)

## IMPORTANT NOTE:

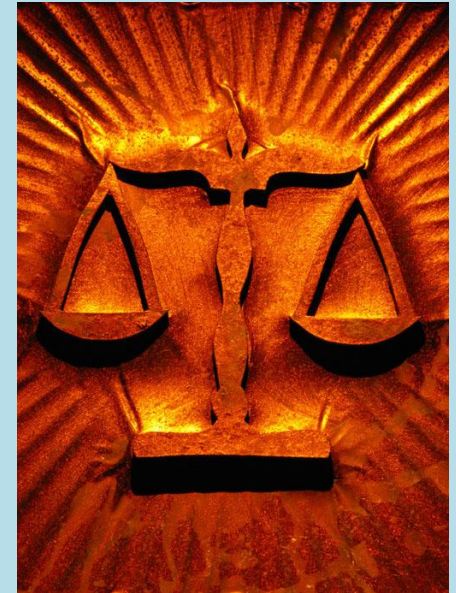
The information provided in this brochure is a guide to help the user understand the process of properly serving papers in a court case; it is not meant to be legal advice. To receive legal advice about service of process, consult an attorney.

*Last updated September 2011*

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## Service of Process

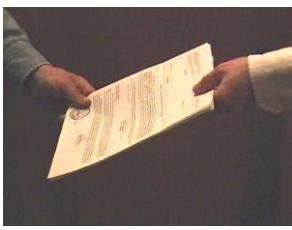
*Giving proper notice to the other party in a court case*



## The State Bar of Montana

*Providing information and educational material for the public as to the rule of law in a civilized society, the legal rights and responsibilities of an individual, and the workings of the legal system.*

Place  
Stamp  
Here



## WHAT IS SERVICE OF PROCESS?

If you file a case with the court, you must let the person who you are filing against (the other party) know about it. But it is not as easy as walking up to the other party on the street and telling them that you filed against them. The other party needs a copy of all the paperwork you filed with the court, and the court needs proof that the other party received these papers. This procedure is called **service of process**, and it is your responsibility. Without proper service of process, your case may not proceed, or your judgment could later be declared invalid.

The best way to go about doing this is:

- Delivery of the paperwork (which generally includes a summons and complaint) through the **mail**, a paid official like a **process server** or the **sheriff's department**, or an unpaid person over age 18 who is **not** in any way part of the court case.

Or

- If there is absolutely no way of reaching the other party, you could possibly serve him or her by publication in a newspaper.

**Remember:** you must serve the other party where they are located. If the other party lives out-of-state, you must hire an out-of-state process server.

## SERVICE BY MAIL

If the other party agrees to accept and acknowledge service in your case, you may be able to serve the papers by mail. The papers can be mailed to the other party, along with a written acknowledgement of service and a return envelope with the postage prepaid. Once you receive this signed and dated acknowledgement of service back from the other party, you must file it, along with the original summons, with the court. This written acknowledgement is your proof that the papers were served.

**NOTE:** If you do not receive the acknowledgement of service back within 20 days after mailing the papers, you must serve the other party by a different method.

## SERVICE BY THE SHERIFF

You may ask the sheriff to serve the papers on the other party. You will usually need to pay the sheriff to do this. However, if the court waived your filing fee when you filed your case, the sheriff will serve the papers for **free**. (This does not cover the cost of making copies, so make sure you have the right number of copies to give to the sheriff.)

Deliver all the papers and their copies to the sheriff's department in the county where the other party lives. Also give the sheriff a self-addressed return envelope, along with specific written instructions, called a **praecipe**, giving the other party's name, address, phone number and other descriptive information, if possible. When the sheriff has served the papers, the sheriff will send you a Return of Service, which you must file with the court along with the original summons. The Return of Service is your proof that the papers were served.

## SERVICE BY A PROCESS SERVER

The most efficient way of serving someone is usually through a process server. A process server is a professional who serves documents as part of their business. A process server will charge a fee, but they will know how to get the job done right with no mistakes that might threaten your court case.

By hiring a professional process server, you can have papers served promptly and correctly. If you need to get your papers served as soon as possible, a process server is your best option.

You can find a process server by searching for one in your local phone book or on the internet. In Montana, a professional process server must have a license. Make sure yours is licensed by checking this website:  
<https://app.mt.gov/lookup/>

Once the papers are served, the process server will send you a Return of Service, which you must file with the court along with the original summons. The Return of Service is your proof that the papers were served.

## SERVICE BY A NON-PROFESSIONAL

You also can get any person over the age of 18 who is **not** involved in the court case to serve papers to the other party. This option is free, but service of process can be complicated. If service is done the wrong way, you may damage your court case. If you can, you should hire a professional server.

If you want to attempt to serve using a non-professional, you must read and follow Rule 4D of the Montana Rules of Civil Procedure *very* closely. The entire Rule 4D can be found at the following website:

<http://data.opi.mt.gov/bills/mca/25/20/25020002044.htm>

## SERVICE BY PUBLICATION

*If all else fails...*

If you cannot find the other party, you may be able to serve by publication in a newspaper, but only as a last resort. Service by publication can only be done for specific types of cases such as dissolution of marriage, property actions, and certain other cases where Montana statute allows this form of service.

First, you need to file papers with the court to prove that you cannot find the other party to physically serve them. You must take these forms to the court and get them approved.

Bring all the paperwork to the newspaper in the county where the other party was last known to reside, with instructions to run your notice for three weeks. The first publication in the newspaper must be made within 60 days after filing the forms with the court. You must also mail a copy of the summons and complaint to the other party's last known address within 10 days of the first publication.

**NOTE:** You must pay a fee to the newspaper to run your notice. Even if you got the filing fee waived when you filed your case, the newspaper will still charge you for publication.

The paper runs your notice once a week for three weeks. When this is done, they will send you a notice called Proof of Publication. The Proof of Publication is your proof that the papers were served.

## AFTER THEY HAVE BEEN SERVED

After you receive proof that the other party was served (by an Acknowledgement of Service, Return of Service, or Proof of Publication), you must return the original proof of service and original summons to the court within 30 days. The other party will generally have 20 days to respond after service of process has been made.

After this time, you can request that the court schedules a hearing for your case with a judge. You can do this by filing a document that asks the court to set a hearing, or by calling your appointed judge's secretary or scheduling clerk and asking that the court schedules a hearing on the case.