

**PLAINTIFF'S GUIDE TO SMALL CLAIMS
PROCEDURES:**

**SERVING THE COMPLAINT
("SERVICE OF PROCESS")**

Greenberg Glusker

Reed Smith

Bet Tzedek Legal Services

Los Angeles County Bar Association

Loyola Center for Conflict Resolution

Southwestern Law School

Disclaimer: This handout is for informational purposes only. It does not constitute legal advice and it does not create an attorney-client relationship.

I. LOCATING THE DEFENDANT

In addition to typical internet searches such as Google, you can use the following tools to find the Defendant.

If you know...	Then use...
Defendant is a partnership or sole proprietorship with fictitious name, and the county of principal place of business.	County Clerk's Office - Fictitious Business Name Statements
Defendant is a corporation, limited partnership ("LP") or a limited liability company ("LLC").	California Secretary of State - use agent for service of process http://kepler.sos.ca.gov/ Or, Secretary of State Limited Partnership Status Unit
Defendant is licensed to do business in a certain city.	City Clerk's Office - Tax and Permit Division (in Los Angeles, fax: 213.978.1548 and state that you are interested in as much public information as possible).
Defendant is an individual and his address or telephone number.	Public Library - Reverse Telephone Directory.
Defendant is a property owner and his name and/or address of property.	County Assessor's Office - tax rolls; or County Register-Recorder's Office - telephone directory under "County Government Offices".
Defendant is an individual and he or his business has moved.	Postal Service - address a letter to last known address, below return address write: "Address Correction Requested. Do Not Forward".
Defendant is an individual and has a P.O. Box address used for business purposes (You must certify info is needed only to serve process).	Postal Service - request name, address, and/or phone number. If does not work, refer employee to P.O. Admin Support Manual §352.44e(2).

II. HOW DO YOU SERVE THE DEFENDANT?

The correct way of notifying the defendant about the lawsuit and requiring his or her appearance is called *service of process*. This means giving a copy of ***Plaintiff's Claim (SC-100)*** to each defendant, which contains the hearing date, time and location so the defendant knows where and when to come to court.

- This can be done in one of three ways:
 - **Personal Service** (see part A below)
 - **Substituted Personal Service** (see part B below)

- **Service by Certified Mail** (by Court Clerk) (see part C below)
This is an additional \$10 fee.

❖ **TIP:** The most effective method is to have the **sheriff** serve the defendant by **personal service**. (See part A below.)

- Service must be by:
 - someone other than yourself (Friend, relative, registered process server or sheriff)
 - Who is 18 years or older; and
 - Not a party to the lawsuit;
- That person then signs a form called ***Proof of Service*** (form **SC-104**) for each defendant, which is filed with small claims clerk 5 days before hearing.

A. **Personal Service**

❖ **TIP:** The best method is to have the sheriff serve the defendant by personal service. This is an additional \$35 fee, but can be waived if you are low income. (See fee waiver section in “Filing a Small Claims Action” handout.)

❖ To have the sheriff serve the defendant, you must:

- Locate the correct Sheriff's branch office. For Los Angeles County you can use this website: <http://civil.lasd.org/CivilProcess/>
- There are Sheriff's offices at the courthouses, so you may be able to visit the Sheriff's office the same day after filing your claim.
- At least four weeks before the hearing date, deliver two copies of the ***Plaintiff's Claim (SC-100)*** to the branch office.
- Provide the Sheriff with "Sheriff's Instructions," i.e., an address for service where defendant works or lives. (A sample form is attached.)
- Pay the \$35 fee.

❖ The Sheriff will mail a Certificate of Service to the court and a Notice of Service to the plaintiff if the ***Plaintiff's Claim*** is served. If not served, a Not Found/No Service return is mailed to the plaintiff explaining the reason for non-service.

If defendant is...	Then you can serve...
Individual	Defendant in person, or someone authorized to receive service.
Sole Proprietorship	Owner.
Partnership	If partnership, one of the partners. If partnership and partners individually, serve each partner.
Corporation	Agent for service listed with Secretary of State (http://kepler.sos.ca.gov/) or any corporate officer, CEO, or general manager.
LLC, LLP, or LP	Agent for service listed with Secretary of State. If LP, can also serve general partner.
Unknown business type	Someone who seems to be in charge during normal business hours.
Landlord	Generally, property owner.
Minor	Parents or guardian of minor. If cannot be reasonably found, any person who cares for, resides with, or employs the minor.

B. **Substituted Personal Service (Personal Service to someone other than Defendant)**

If defendant is...	Leave first copy at...	Mail second copy by first class postage prepaid...
Individual	Defendant's house or business, with a person 18 years or older, member of household or apparently in charge, and informed of what the papers are for.	To the <u>same place</u> where process was left.
Corporation or other business	Office of the business during usual office hours with corporate officer, or agent for service of process.	To the <u>same place</u> where process was left.

Note: service must be made 25 days before hearing if in-county defendant, or 30 days before hearing if out-of-county defendant. Service considered complete on 10th day after mailing.

C. **Service by Certified Mail**

- **Must** be done at clerk's office, cost is \$10.00
- Service deemed complete once clerk receives a return receipt, signed by person identified to receive service
- Once *Plaintiff's Claim* leaves clerk's office, no longer clerk's responsibility, any delivery and tracing questions must be made to post office
 - ❖ **TIP:** Be proactive and call clerk 10-15 days before Court date to determine if service is completed. This means that defendant signed mail return receipt. Have case # and hearing date ready. Or, go on Open Access: <http://www.losangelescourt.org/openaccess/>
 - • **Problems with this:** low success rate, about 50%. Reasons include avoidance by defendant and invalid service.

- ❖ **TIP: Do NOT use certified mail** if the defendant is a business entity. If a claim is served on a business, the return receipt must be signed by the designated "agent for service of process." This rarely happens. More likely, it is signed by the receptionist or someone in the mailroom, and then service is **not** effective.
- ❖ You will have much better luck using the sheriff to serve the defendant (see part 2 above).
- If you haven't completed service on the defendant before the hearing, you may either:
 - ❖ dismiss claim "without prejudice" and re-file with proper service (but then you have to start over and pay fees or do fee waiver again) OR
 - ❖ At least 10 days before the hearing, file ***Request to Postpone Trial (Small Claims) (SC-150)*** to postpone hearing, and serve the defendant.

III. WHAT IF THE DEFENDANT IS OUT-OF-STATE OR OUT-OF-COUNTY?

- ❖ An out-of-state defendant may be sued in Small Claims Court in California if the dispute stems from actions in California: for example, a car accident on a California highway or a contract entered into, performed or breached in California.
- ❖ After locating the defendant (see above), you may have him served in any of the three ways discussed above: personal service, substituted service, or certified mail.
- ❖ **TIP:** Use the Internet to look up the Sheriff's Office in the county where the defendant resides and call the Sheriff to find out if they perform service of process.
 - Often on the website, the Sheriff will have a special section for information about service of process.
- ❖ If the Sheriff's office will not serve process, then you may want to contact a private "process server" in that location. This is a third party whose job is to serve legal documents on defendants. Rates will vary.
- ❖ Certified mail is still a last resort for the reasons discussed above.
- Again, if you are unable to complete service on the defendant before the hearing, you may either dismiss claim "without prejudice" and re-file with proper service OR at least 10 days before the hearing, file ***Request to Postpone Trial (Small Claims) (SC-150)*** to postpone hearing, and serve the defendant.