

Overview – The Basics of How to Effect Service

General Information:

When you file a legal matter in court against another party, that party is entitled to notice of that legal matter. In some circumstances, the court provides the other party with the required notice while in others it is up to the party filing the case to provide that notice. The means by which notice is provided is sometimes referred to as “service of process.” Ultimately the goal is to ensure that the other party has received notice of the legal action. If the other party has not received notice, any orders issued by the court may be subject to challenge and reversal.

As noted above, in some cases the court provides notice to the other party. For example, in small claims cases, the court mails the notice of the small claim, as well as the small claim itself, to the defendant. Also, in cases where a person seeks to register a judgment from another state, when the filing is made in the New Hampshire court the court sends the other party a notice of the filing.

In the majority of cases, however, the party filing the case is required to provide notice of the action to the other party. Both statute (law) and court rule dictate the manner in which that notice is to be provided. In some types of cases, the filer may choose how to serve the other party, but in most cases the law or the court will direct how service upon the other party is to be made.

If you are unsure how service is to be made in your case, you should contact the court’s Information Center to check. If you do not have the other party served correctly, service may be deemed ineffective and you will have to do it again.

If you are required to serve someone that you have filed a claim against, there are generally a couple of ways in which this is done. The most common means of serving someone with a new case is by having the Sheriff’s Department hand the paperwork to the other party. If the Sheriff’s Department is unable to hand the paperwork directly to the other party, sometimes they may leave it with the other party at that party’s address listed on the paperwork that was filed with the court. This is referred to as “abode” service, while the Sheriff directly giving the paperwork to the party is referred to as “in hand” service. In hand service is a more reliable way in which to effect service of process. Abode service may sometimes not be effective if, for example, the paperwork left at the other party’s door is taken or is impacted by weather.

Some cases allow service to be accomplished by certified mail. The Court may allow this type of service in a replevin case for example.

In either situation, when you have proof of service either in the form of a “return of service” from the Sheriff’s Department or the certified mail receipt from the post office, you must file that proof with the court so that there is a record that the other party actually received notice of the pending action. If you don’t file proof with the court and if the other party does not appear at the hearing, the court may not be able to take further action.

Once the initial service of process has been accomplished, most later filings do not have to be served upon the other party with the same degree of formality. It is merely the initial notice of the action to the other party that must be served formally. Copies of later filings in a case are usually sent electronically by the filer to all parties on the case.

If the other party resides outside the State of New Hampshire, the law provides a very specific process for effecting service. This involves service upon the Secretary of State (New Hampshire), a certified mailing to the other party at their last known address, and an affidavit with the certified mail receipt being filed with the court. The timing of each event in this process is critical.

You may have also heard about service by publication. This is done in limited circumstances either because it is required by law in a particular case or because no other method of service has been or would be effective. Instructions for service by publication will come from the court when it is requested or required.

For Further Information:

If you have questions, please contact the Information Center at 1-855-212-1234.