Notice to Other Party -- Trying Again to Serve

If you have attempted to give notice of your divorce action to the other party, but were not successful, you can try again to get that necessary step taken, by using these forms:

https://lawhelpinteractive.org/Interview/InterviewHome?templateId=7285

Service – Trying Again to Get Service on the Defendant

It is required that notice be given to the other party in any court action. If it is the initial filing of a Petition, then notice must be given in certain ways. In the Court language, this is called "Service on the opposing party."

The initial court papers that you prepared gave you the papers you need to serve the Respondent in the way that you choose initially. Sometimes, that doesn't work out.

Either they move, weren't at the address you thought or you need to try another method of service.

These forms will ONLY help you create a new (Alias) Summons for Service. You will need to add a copy of all the documents that were in the original service packet. That could be a Petition and other documents. You should plan to copy those from the set of papers that you got as copies when you filed your original court action.

https://lawhelpinteractive.org/Interview/InterviewHome?templateId=7285

Service Flow Chart

This chart may help you decide the best option depending on your situation. You can download the chart **here.**

Frequently Asked Questions about Service of Process in Kansas Cases

What is service? What does this even mean?

Service is the official act of delivering court documents to the other party so they know that a case has been filed against them. Serving papers on an opposing party is also called giving "notice". Parties must receive official notice of court cases against them so they have an opportunity to show up to court and defend their case. To do this legally, you must follow certain rules and eventually prove to the court that service was correctly performed.

What is a "Service Packet"?

The Service Packet is the collection of initial court paperwork, stamped by the clerk, which must be served on the opposing party. This packet includes summons, petition, and any attachments, including proposed parenting plans, child support worksheet, and temporary orders but DOES NOT include poverty affidavits

What are the types of service or ways to give notice of a court case?

Voluntary Entry of Appearance: The opposite party agrees that they have received a copy of the petition and any other initial paperwork by signing a Voluntary Entry of Appearance form in front of a notary public. The original form is then filed with the Clerk of the Court.

Personal Service: A Sheriff's Deputy personally delivers the court papers to the opposing party. To be successful at this form of service you must provide the Sheriff's office with an address where the person is between 8 – 4. There is a small charge for this type of service (about $15). They can only give the papers to the person.

Residence Service: A Sheriff's Deputy personally delivers the court papers to a "person of suitable age and discretion" who resides at the same location as the opposing party. This is done during the day, so 8 – 4 is the time frame when you anticipate someone is at the home to get the papers.

Certified Mail Service with Return Receipt: Certified Mail Service with Return Receipt is performed by mailing the court papers to the opposing party by certified mail with a return receipt. You are responsible to follow the steps to complete service by this method on your own. You should take the papers in an envelope addressed to the Respondent to the Post Office and ask them for the form to get certified mail with return receipt. It will cost you about $7 to do this. They send a notice to the person that they have a Certified Letter for them. The envelope stays at the Post Office. This method of service is only successful if the person comes to the Post Office and picks up the letter (or comes to the Post Office and refuses the letter).

Once the packet has been delivered to the other party, the return receipt is returned to you by the Post Office. That is a green card with the date and signature on it. You have to tape this green card on a paper that was printed out with your service packet. It is titled Return of Service for Certified Mail. This paper is filed with the Clerk of the Court to prove that service was performed.

Note: If the Respondent come to the post office and refuse the letter, the post office makes a note of that and you can file that with the Court. That is considered service, if you mail a copy of the papers first class to the person at the same address where you sent the certified mail letter.

Service by Publication: If you do not know where the other party is, service by publication may be appropriate. Service by Publication requires informing the Judge about attempts you made to serve the party by

filing an affidavit. You will have to show that you have tried to get an address for the person. If the Judge approves service by publication, notice must be published in a legal newspaper, once a week for three weeks, and include the required information the opposing party will need, in order to know that a case has filed against them. You will need to get the name of the newspaper from the Clerk of the Court. You will have to make your own arrangements to pay the newpaper to run your notice. Publication is typically the most expensive way of doing service and can cost an additional $150-$200, depending on the legal newspapers in your area. In addition, a divorce or other action taken on publication service can be set aside for one year after the Court took action.

You MUST send a copy of the notice that was published in the newspaper to at least one address where you think the person might know where the Respondent is. That could be a family member, the last address at which you know they lived, etc.

What if I tried serving the other party and it was unsuccessful?

To begin with, you must make a reasonable effort to locate the other party. Failing to serve the other party can result in your case being dismissed. If you think that you have another address for service or some additional information to help the Sheriff locate the person between 8 and 4, you can use the Service-Try Again interactive interview to prepare the papers you need for other service.

It is possible to hire a person to locate and serve the other party. That person is called a Process Server. You can find people who do that job by searching that term (Process Server) on Google or by using the directory of the National Association of Professional Process Servers at https://napps.org/. You should understand what it will cost before you hire a process server.

If after a diligent search, you cannot locate them, Service by Publication may be appropriate depending on the type of case you are bringing and the relief you are requesting from the court. Keep in mind that you will need a new service packet with file-stamped documents each time you try to serve the other party.

The opposing party knows I filed the case, isn't that enough?

No, the opposing party has the right to be formally informed that a case has been filed against them, where the case was filed, and what the consequences would be for not showing up to court. Therefore, it is essential that the other party be properly notified by legal service. If they know and are agreeable, the Voluntary Entry of Appearance may be a good option.

What if I can't find the other party to notify them?

You must make an honest effort to learn the location of the other party. If all attempts at finding them are unsuccessful "Service by Publication" may be appropriate depending on the case you are filing. See directions for "Service by Publication."

Do I have to notify the father to get a paternity order?

Yes, in a paternity case, the father must be notified. "Service by Publication" is not an option for these cases.

Do I have to notify the father to modify child support?

Yes, the father is entitled to service before the court will order or modify child support. For cases involving child support, the court must establish jurisdiction over the father through Personal, Residential, or Certified Mail Service with Return Receipt.

Can I have the Sheriff serve the papers?

Yes, by following the steps for Personal, Residential and paying the $15 fee.

Can I just give them the papers?

No. Service cannot be performed by simply giving the other party the paperwork. You can give them the papers and ask them to sign a Voluntary Entry of Appearance. That is considered good service.

Can I mail the papers?

Yes, but you must follow the directions for "Certified Mail with Return Receipt." Simply putting the papers in the mail without following the instructions is considered defective service, requiring you to try service again or have your case dismissed.

What if the other party is in another country?

If the opposing party is in another country, service can be very difficult. Therefore, talking with an attorney about service is your best option.

What if the other party is in jail or prison?

If the opposing party is incarcerated, request Personal Service and list the party's address as the jail or prison address. In addition, it is oftentimes helpful to have the party's inmate number.

What happens when the Sheriff tries to serve the party but service fails?

If the opposing party can't be found after 2 or 3 attempts, the Sheriff will return the papers to the Clerk of the Court as unserved. You won't know that has occurred unless you follow up with the Clerk to see if Service has occurred. You can try again at service either at the same address or another address where the person is between 8 – 4. You need to prepare a new Summons (called an Alias Summons) and make copies of the papers that were in the original service packet. You can do that from the Service-Trying Again interactive interview here: https://lawhelpinteractive.org/Interview/InterviewHome?templateId=7285

In this process you can use the same form of service you did before or try another way to get notice to the other party.

Can the other party be served by their probation officer?

No, the opposing party's probation officer cannot serve the court documents. But, if you know that the Respondentt will be at the office at a certain time, you can share that with the Sheriff's office and ask them to serve the Respondent there. They won't wait to see if the Respondent shows up.

What if I only talk to the other party on Facebook?

Just talking to the parties is not enough. You need to try and locate them. You can try to get the party's address directly from them or, if you are tech savvy, use Facebook's location services or similar features to find where they are.

Checklists for Serving the Opposing Party in a Legal Case

You can download the **Checklists for Serving here.**

Check when completed	Steps for Voluntary Entry of Appearance
	File Petition with clerk of the court
	Fill out "Request and Service Instructions Form" and file with Clerk, selecting service by Voluntary Entry of Appearance
	Clerk issues a summons with the deadline for filing a response
	Give a copy of the service packet, including summons, petition, and all pleadings, to opposing party with "Voluntary Entry of Appearance" form
	Opposing party signs in front of a Notary Public
	Opposing party sends a copy of the "Voluntary Entry of Appearance" back to petitioner.
	Petitioner MUST file the signed and notarized "Voluntary Entry of Appearance" form with the clerk of the court.

Check when completed	Steps for Residence Service

Residence Service is accomplished by following the Personal Service steps 1-4, including requesting Personal Service.

A sheriff deputy will take the Service Packet to the address of the residence you provide.

If the opposing party is not present when the deputy comes, the deputy will leave the packet with a person of "suitable age and discretion" who also lives at the residence.

The deputy will fill out the Return of Service Form, and return it to the Clerk.

The Clerk will file it in your case

You should check regularly with the court, either online or by phone, to find out if the service was successful.

Check when completed

Steps for Personal Service

File Petition with clerk of the court

Fill out "Request and Service Instructions Form" and file with Clerk, selecting service by Personal Service

Clerk issues a summons with the deadline for filing a reply to the Petition.

Either leave Service Packet and $15 per defendant as Sheriff's fee with the Clerk, who will deliver it to the Sheriff, or take the Service Packet, including summons, petition, all pleadings, a Return of Service Form, and $15 per defendant to the Sheriff's Office.

A sheriff deputy will take the Service Packet and attempt to deliver it to the opposing party. They only attempt to serve people between 8 – 4, so make sure they have an address that will work during that time frame. Service of someone at work is fine with the Sheriff.

The deputy will fill out the Return of Service Form, and return it to the Clerk.

The Clerk will file it in your case

You should check regularly with the court, either online or by phone, to find out if the service was successful.

Check when completed

Steps for Certified Mail Service with Return Receipt

Certified Mail Service can be performed by you, as the party, or by Sheriff, if you request it.

File Petition with clerk of the court and request a hearing

Fill out “Request and Service Instructions Form” and file with Clerk, selecting service by Certified Mail with Return Receipt

Clerk issues a summons with the deadline for filing a reply to the Petition.

Take entire Service Packet, including the file-stamped summons, petition, and all pleadings, and mail to the opposing party by Certified Mail with Return Receipt. You may use the United States Postal Service or a commercial service like UPS or Fed Ex, so long as the package is signed for and you request a return receipt showing who received the package, delivery date, address delivered, and who made the delivery.

After delivery, the return receipt will be returned you.

If the return receipt says “undelivered”, service has not been performed

If the delivery was successful, fill out the “Return of Service for Certified Mail” form

Attach one copy of the return receipt ("green card" for USPS) to the middle of the page of "Return of Service for Certified Mail" form.

Bring "Return of Service for Certified Mail" to the Clerk to be filed in your case.

Service is completed.

Check when completed

Service by Publication

Service by Publication may be appropriate as a last resort. Note that Service by Publication is only allowed in certain types of cases. For example, with Publication you can get a divorce, custody order, or divide property within the state, but you CANNOT divide property located in a different state, receive an alimony award, receive a child support order, or direct the adverse party to do something personally. Service by Publication is also substantially more expensive than requesting the Sheriff's to serve the opposite party. Publication may run from $150-200, whereas service by Sheriff will cost $15 in state. An order issued in a case with service by publication can be set aside for one year from filing.

To perform Service by Publication, you must receive an order from the judge allowing you to publish notice. You first file an Affidavit stating that you have tried to find the person and have no idea about how to do that.

Before requesting Service by Publication, the Judge may want you to try service by Personal Service and Certified Mail with Return Receipt

You must fill out an "Affidavit for Service by Publication" and sign it before a Notary Public

You must also fill out a "Notice of Suit" form

The "Affidavit for Service by Publication" must be filed with the Clerk of the court

After the Affidavit is reviewed, the Judge may allow you to use this form of service. You know that because the Judge signs an “Order Allowing Service by Publication”.

You must contact the local Legal Newspaper. This is likely a newspaper you have never heard of. You should ask the Clerk of the Court what newspaper is used in your county for service of legal process. Provide the paper with the “Notice of Suit”, and the cost for publication. The cost for Service by Publication varies by newspaper, but you should expect $150 - $200.

The notice must be published once a week for three consecutive weeks.

You MUST then mail the notice from the paper WITHIN 7 days of the first publication, to an address of at least one person you think might know where the other party is. That could be one of their family members, the last place you knew they lived (in case they have mail forwarding in place) or to one of their friends.

Service is completed.

Last updated on July 15, 2025.

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