

Rule 4: How do I serve the other party with my Summons and Complaint?

The following information is NOT legal advice. This is an informational sheet that may not apply to your specific situation. If you have questions about how to serve the other party in your case, you should consult Rule 4 of the North Carolina Rules of Civil Procedure¹ or a competent attorney in North Carolina.

Once you have filed your Summons and Complaint, you will need to “**serve**” a copy of the paperwork to the other party (or parties) and provide “**proof of service**” for the court file. North Carolina law does not permit you to personally serve the other party (or parties) with the Summons and Complaint. You may not deliver the Summons and Complaint to the other parties by hand unless you also use one of the appropriate service methods specified in Rule 4 of the North Carolina Rules of Civil Procedure.

SERVICE IN THE UNITED STATES

- If the other party (also called the Defendant) lives in the United States, the Summons and Complaint may be served in any one of the following ways:
1. **Personal service:** You may go to the Sheriff’s Office in the county in which the person lives and request personal service of the other party. There is a fee for this service. If the Sheriff is unable to serve the person and service is returned “unserved,” or if the person to be served lives outside of North Carolina, you may hire a process server. The process server must be authorized by law to serve, over 21 years of age, not a party to the action, and not related by blood or marriage to any of the parties.
 2. **Service by registered or certified mail, return receipt requested or signature confirmation:** You may go to the post office and mail a copy of the Summons and Complaint to the other party by registered or certified mail, return receipt requested or by signature confirmation. The Summons and Complaint must be addressed to and delivered to the other party (or parties) at his or her home. There is a small fee for this service.
 3. **Service by designated delivery service:** You may use an authorized designated delivery service (26 U.S.C. §7502(f)(2)) such as Federal Express, UPS, or DHL. If you use this method, you must use the delivery service to send the Summons and Complaint addressed to the other party at his or her home, and you must obtain a receipt for delivery.
 4. **Service by publication:** If you have tried the other methods of service and are unable to serve or locate the other party (or parties), you may serve him or her by publication. This is a **last resort** method of service. Before you can use this method of service, you will be required to prove to the Judge that you have searched diligently for the other party and tried other methods of service prior to publication. To use this method, you must first do everything reasonable to locate the other party’s address, such as searching the internet, asking family and friends, contacting the department of motor vehicles, checking law enforcement websites, or hiring a private investigator to do a search. If you are unable to locate the person after the steps referred to above, you may publish a notice in the paper in the county in which the other party was last known to reside. The notice must comply with Rule 4 of the North Carolina Rules of Civil Procedure and must be published once a week for a period of three consecutive weeks. The cost of publication can be very high, sometimes several hundred dollars. This alternative method of service is complicated and may be difficult to do without the assistance of an attorney.

Service in a Foreign Country

Service outside the United States is governed by North Carolina General Statutes, §1A-1, Rule 4 (j3). This method of service depends on the country in which the other party resides. You will have to review Rule 4(j3) and the appropriate methods for service in the specific foreign country. This is beyond the scope of this information sheet. Consider consulting an attorney if the other party resides outside of the United States.

¹The text of Rule 4 may be found at http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_1A/GS_1A-1_Rule_4.html.

PROOF OF SERVICE

➤ Once the Summons and Complaint have been served, there must be **proof of service** in the court file. If this proof is not in the file before your court date, you will not be able to show the Judge that the other party has been properly served with your Summons and Complaint and you will not be allowed to proceed with your hearing.

1. **Personal service:** If you used a deputy sheriff in Wake County to deliver the Summons and Complaint to the other party, the deputy sheriff will fill out the "Return of Service" section on the back of the Summons and return the document to the Clerk of Court. This "Return of Service" will contain a statement showing how and when the person received the paperwork. The "Return of Service" form on the back side of the Summons will be placed in the court file by the Clerk of Court upon receiving it from the Sheriff's office. If a deputy sheriff from another North Carolina County or a law enforcement officer in another state delivered the Summons and Complaint, the Return of Service may be sent directly to the Clerk of Court or may be sent directly to you as the requesting party. If the law enforcement officer's Return of Service was sent directly to you, then it will then be up to you to file the Return of Service documents with the Clerk of Court prior to your hearing.

If you used a process service to deliver the Summons and Complaint, the person who served the paperwork will need to prepare an Affidavit of Service for you to place in the court file. The affidavit must contain the place, time, and date the party was served, a statement that the process server knew the person to be served, the manner in which the party was served, and the qualifications, identity and contact information for the process server. The affidavit must be signed by the process server in the presence of a notary public. You must file the Affidavit of Service with the Clerk of Court before your hearing.

2. **Service by registered or certified mail, return receipt requested:** If you mailed the Summons and Complaint to the other party by registered or certified mail, or signature confirmation, you will need to prepare an Affidavit of Service. The affidavit must state that you mailed a copy of the Summons and Complaint US Mail, when and how you mailed the Summons and Complaint, and it must contain the address at which the Defendant was served. The green card or electronic proof of service, or the signature confirmation, must be attached, and the affidavit must be signed by you in the presence of a notary public. You must file the Affidavit of Service with the Clerk of Court before your hearing.
3. **Service by designated delivery service:** If you used a designated delivery service to deliver the Summons and Complaint, you will need to prepare an Affidavit of Service. The affidavit must contain the name of the delivery service used to deliver the Summons and Complaint and the address to which the Summons and Complaint were delivered. The delivery receipt containing the other party's signature must be attached, and the affidavit must be signed by you in the presence of a notary public. You must file the Affidavit of Service with the Clerk of Court before your hearing.
4. **Service by publication:** If you chose to serve by publication, you will need to prepare and file an Affidavit of Due Diligence. This affidavit must state all of the methods of service you tried before attempting publication. It must also state all the attempts you made to locate the other party prior to attempting publication. You must sign this affidavit in the presence of a notary public.

Once you have published the appropriate notice in the newspaper, you will also need to obtain an Affidavit of Publication from the newspaper. This affidavit must contain a copy of the notice that was published and a list of the dates the notice was published. The Affidavit of Publication must be signed by an authorized agent who works for the newspaper and signed by that agent in the presence of a notary public.

Both the Affidavit of Due Diligence and the Affidavit of Publication must be filed with the Clerk of Court before your hearing.