

How To Effect Service By Publication



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HOW TO EFFECT SERVICE BY PUBLICATION

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SERVICE BY PUBLICATION*

**Note of caution:* Please be advised that Service by Publication can be costly and time-consuming. Before you begin, please make certain that you are not able to locate your spouse through family, friends, employers, etc. Exhaust all the possibilities available to you. A person who has been granted a fee waiver (Poor Person Status) for the court fees is not exempt from paying the fees associated with Service by Publication as they are not considered court fees.

Please note that the estimated cost for a diligent search is approximately \$35, but it may vary based on how many results come up during your internet search stage and the costs incurred with visiting the spouse's last known address.

There are also costs for publication. If you were granted Poor Person Status for the court fees, then you may publish in *The New York Law Journal* for no cost as long as you fax your Poor Person Order along with the necessary paperwork. Otherwise, there are costs that are normally associated with publication. Contact the newspaper for the publication rate as they vary.

I. Introduction

A. *What Is Service By Publication?*

In a divorce action, and in all actions, a party must be given notice of the lawsuit against him or her. In circumstances where the defendant cannot be located, one may serve the defendant by publication, but only as a means of last resort. The law provides that "the court shall order service of summons by publication... if service cannot be made by another prescribed method with due diligence." C.P.L.R. § 315. Essentially, a plaintiff must demonstrate to the court that he or she has *diligently searched* for the defendant but was unable to locate him or her. Based upon an inability to locate the defendant, the court can direct that the notice of the action to the defendant be published in one or more English-language newspapers. C.P.L.R. § 316.

In order to proceed by publication, a plaintiff must demonstrate to the court that he or she has made *diligent and reasonable efforts* to locate the defendant. The documents to be submitted, showing that the plaintiff has made a diligent search, consist of reports or correspondences from selected governmental and non-governmental agencies. The

plaintiff will send a written request to the agency. The agency will then perform a search and mail the plaintiff a written indication that a records search for the defendant was conducted. Once the plaintiff has gathered the necessary documentation, the information is presented to the court along with the plaintiff's affidavit. In the affidavit, the plaintiff must include evidentiary facts describing his or her attempts to locate the defendant and the results of each attempt. Upon the granting of an order for service by publication, the plaintiff can then post notice of the divorce action in the newspaper designated by the court.

B. How Do I Do A Diligent Search For My Spouse?

In order to demonstrate that you have made a diligent search for your spouse and proceed by publication, you must complete the following steps (1-4) below:

1. Step 1 – Diligent Search

The following agencies, or items, must be searched:

i. U.S. Military

You must obtain a search report from the Defense Manpower Data Center. This may be obtained online or through a single letter. *See Section II-A* below for instructions and contact information.

ii. New York City Board of Elections

You must obtain a search report from the Board of Elections. This may be obtained *either* through the Manhattan office for a citywide search *or* from each Board of Elections office located in each of the **five** (5) boroughs. *See Section II-B* below for instructions and contact information.

iii. New York State Department of Motor Vehicles (DMV)

You must obtain a search report of the defendant's "Driving Record Abstract" from the DMV. *See Section II-C* below for instructions and contact information.

iv. United States Postal Service (USPS)

You must obtain a search report from the USPS using their "Service of Legal Process" form. *See Section II-D* below for instructions and contact information.

v. New York City Telephone Directories

You must state in your affidavit the results of a search of the telephone

books or directories for all five (5) boroughs of New York City. *See Section II-E* below for instructions.

vi. Internet Search

You must obtain a search report on internet search sites. *See Section VII-F* below for instructions.

vii. Visitation of Defendant's Last Known Address

You must attest in your affidavit that you visited the defendant's last known address (unless the postal service search indicates that the defendant does not live at that address). *See Section II-G* below for more details.

2. Step 2 – Affidavit in Support of Service by Publication

Once you have obtained responses from all of the organizations listed above, you must prepare an "Affidavit of Plaintiff." A sample affidavit has been included on pages 24-26 of this packet. The affidavit must be completed, signed, and notarized.

3. Step 3 – Submission of Papers

Your papers are now ready to be submitted to the **Ex Parte Office, Room 315**, of the New York Supreme Court, County of New York, located at **60 Centre Street**. "Ex parte" means that one party is presenting his or her side to the judge.

The following papers must be submitted for service by publication:

- viii. Affidavit of Plaintiff
- ix. Search results, clearly labeled as "Exhibits"
- x. A sample of the Summons With Notice provided by the newspaper as it will appear for publication.

Before these papers are submitted to the Ex Parte Office, you will also need to submit your divorce papers. See **Section IV** for more details.

4. Step 4 – Publication

Once the proposed Order of Publication has been reviewed and signed by a judge, you may proceed with service by publication. Generally, the court will direct that publication be made in the *New York Law Journal*. The following information must be submitted to the newspaper:

- xi. The Order to Serve by Publication
- xii. A copy of the Summons With Notice including the index number
- xiii. A copy of the Poor Person Order, if applicable.

The publication, along with a cover sheet, must then be submitted to the appropriate newspaper and you must pay for the cost of publication (Contact appropriate newspaper for publication rates). See **Section V** for more details.

II. Diligent Search

A. U.S. Military

To verify whether your spouse is currently active in the U.S. Military, you must obtain a Servicemembers' Civil Relief Act (SCRA) certificate through:

- i. The **Defense Manpower Data Center's (DMDC) website** at

<https://www.dmdc.osd.mil/appj/scra/scraHome.do>. This website will provide you with the current active military status of an individual. You must enter your spouse's **Social Security number, last name, first name, middle name** (if any), **birth year, birth month, and birth day** into the query form. *See* the following page (1 page total) for a sample website query form and instructions for website. Upon entering the required information and clicking the "Look Up" button, an immediate search will be conducted. The results and SCRA certificate will then displayed. You must print the online SCRA certificate. There is no charge for this certificate if a military search is done online; *or*

- ii. Sending a **written request along with a self-addressed stamped envelope** to:

Defense Manpower Data Center
Attn: Military Verification
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593.

The **written request** should include your spouse's **full name** (spelled correctly), his/her **pre-marriage name** (if any), his/her **date of birth**, and his/her **Social Security number** (if known). A sample letter can be found on page 10 of this packet. There is no required payment for this service.

A U.S. Military search is complete when you have received one (1) SCRA certificate from the DMDC, either via the website or by mail. If a SCRA certificate indicates that your spouse is in the active military service, you cannot proceed by service by publication.

i. SCRA Query Form

To access and complete the online query form, you may enter the following website directly into the web browser: <https://www.dmdc.osd.mil/appj/scra/scraHome.do>.

If the page is not found, you can also access the website indirectly through the U.S. Department of Defense website at: <http://www.defense.gov/faq/pis/PC09SLDR.html>. Once on this webpage, click on the link provided by the U.S. Department of Defense website for SCRA certificates.

The webpage containing the SCRA Certificate query form should look as follows:

(SCRA) Service Members Civil Relief Act

SSN	<input type="text"/>	Repeat SSN	<input type="text"/>
Last	<input type="text"/>	Last	<input type="text"/>
First	<input type="text"/>	First	<input type="text"/>
Middle	<input type="text"/>	Middle	<input type="text"/>
Birth Yr	<input type="text"/> Month <input type="text"/> Day <input type="text"/>	Birth Yr	<input type="text"/> Month <input type="text"/> Day <input type="text"/>
<input type="button" value="LookUp"/>			

Upon clicking the "LookUp" button, based on the SSN and other personal information furnished, the Department will advise you that it does

1. Not possess information regarding whether the individual is on active duty, or
2. Possess information indicating that the individual is or was on active duty.

OR

ii. Written Request

A sample letter for the written request to the DMDC along with a self-addressed stamped envelope can be found on the following page (1 page total).

From:

Name

Address

Date: _____

To:

Name

Address

To Whom It May Concern:

I am writing to inquire about the location of my spouse. Please inform me if you are able to locate an address for him/her. His/her birth name is _____

First name

Last name

and his/her married name is _____ .

First name

Last name

His/her Social Security number is _____.

His/her date of birth is _____.

His/her last known address is _____.

Thank you for your attention to this matter.

Sincerely,

Signature

Print Name

B. New York City Board of Elections

To access New York City Board of Elections records, you can either contact the **Manhattan office** for a citywide search or contact **each office individually**. A sample form letter can be found on the following page (1 page total).

A. To do a citywide search through the ***Manhattan office***, you must send:

1. A **written request**, including your spouse's **date of birth** and **last known address**, if possible, and
2. A **postal money order for \$15.00** to the Manhattan office made out to the NYC Board of Elections.

B. To do individual countywide searches through each of the five (5) New York borough offices, you must send:

3. A **written request**, including your spouse's **date of birth** and **last known address**, if possible, and
4. A postal money order for \$3.00 to *each* county office (*see* addresses below).

NYC Board of Elections Contact Information

County Office	MANHATTAN: COUNTY 1	BRONX: COUNTY 2	BROOKLYN: COUNTY 3	QUEENS: COUNTY 4	STATEN ISLAND: COUNTY 5
Address	Manhattan Borough Office of the NYC Board of Elections Att: Troy Johnson, Chief Clerk 200 Varick St., 10th Floor New York, NY 10014	Bronx Borough Office of the NYC Board of Elections Att: Anna M. Torres, Deputy Chief Clerk 1780 Grand Concourse, 5th Floor Bronx, NY 10457	Brooklyn Borough Office of the NYC Board of Elections Att: Diane Haslett- Rudiano, Chief Clerk 345 Adams St., 4th Floor Brooklyn, NY 11201	Queens Borough Office of the NYC Board of Elections Att: Barbara Conacchio, Chief Clerk 126-06 Queens Blvd. Kew Gardens, NY 11415	Staten Island Borough Office of the NYC Board of Elections Att: Sheila Del Giorno, Chief Clerk 1 Edgewater Plaza, 4th Floor Staten Island, NY 10305
Phone	(212) 886-2100	(718) 299-9017	(718) 797-8800	(718) 730-6730	(718) 876-0079

A New York City Board of Elections search is complete when you have received five (5) search results indicating a search of counties 1-5. If any of the five (5) county searches indicate an address for your spouse, you must personally verify whether he/she is living at the address given.

From:

Name

Address

Date: _____

To:

Name

Address

To Whom It May Concern:

I am writing to inquire about the location of my spouse. Please inform me if you are able to locate an address for him/her. His/her birth name is _____
First name Last name

and his/her married name is _____ .
First name Last name

His/her Social Security number is _____.

His/her date of birth is _____.

His/her last known address is _____.

Enclosed, please find payment for conducting a search for my spouse and any other forms that may be required by your agency. Thank you for your attention to this matter.

Sincerely,

Signature

Print Name

C. New York State Department of Motor Vehicles (DMV)

To request a **“Driving Record”** through the DMV, you must:

- A. Complete the DMV *Form MV-15* including **proof of your own identity**, your **spouse’s full name, date of birth**, and **last known address**, if possible. The MV-15 form found on the following pages (4 pages total) can also be downloaded from the DMV website at: <http://www.nydmv.state.ny.us/forms.htm>.
- B. Send **\$10.00** by check or money order, made payable to “Commissioner of Motor Vehicles.”
- C. Send the completed form, proof of identity, and payment to the following address:

**MV-15 Processing
NYS Department of Motor Vehicles
6 Empire State Plaza
Albany, NY 12228**

A DMV search is complete when you have received an **“Abstract of Driving Record”** from the DMV. If an address is listed under your spouse’s name, you must personally verify whether he/she is living at the address given.



New York State Department of Motor Vehicles

**INSTRUCTIONS FOR REQUESTING
DMV RECORD INFORMATION USING FORM MV-15**

(PLEASE READ INSTRUCTIONS FIRST)

Use this form to request ONLY those items listed on Page 3.

Follow steps on pages 1, 3 and 4. We cannot process incomplete forms, or forms received without enough information to conduct a search.

STEP 1 Complete your return receipt located on the bottom portion of this page.

STEP 2 Complete name and return address section, and attach a copy of your driver license, driver identification card issued by a state motor vehicle authority, or 6 points of identification (*see form ID-44 for acceptable proof of identity*).

PART A

Be sure to check the box or boxes next to each of the items you are requesting.

PART B

Provide as much information as possible about the motorist or vehicle records requested.

STEP 3 **Required compliance with the Federal Driver's Privacy Protection Act (DPPA)**

Please read this section carefully and place your initials on the line next to each permissible use you select (Page 4).

IMPORTANT: If you are requesting only your own records, you may skip to STEP 4. ***Title abstracts or title application photocopies may contain the names of other individuals. If you are requesting these documents, you must complete STEP 3.***

STEP 4 Sign and print your name. **Remember to attach a copy of your identification.**

Mail your completed application, along with your ID and check or money order (exact fee, no starter checks accepted), payable to the Commissioner of Motor Vehicles, to:

**MV-15 Processing
NYS Department of Motor Vehicles
6 Empire State Plaza
Albany NY 12228**

STEP 1 Your return receipt

Name: _____
DOB: _____
Plate: _____
VIN: _____

OFFICE USE ONLY

☐ Records Found ☐ No Records Found
Amount Received
from you \$ _____
Fee \$ _____
Refund (if any) ... \$ _____
Operator _____
Date _____

Print/Type name and address where records are to be mailed.

STEP 2

To process this request, we need to identify you, the requester.

Attach a copy of **your** driver license, non-driver identification card issued by a state motor vehicle authority, or 6 points of identification (*see form ID-44 for acceptable proof of identity*).

Print your name and return address below, and fill in the payment method.

PAYMENT METHOD		• Do NOT SEND CASH •
<input type="checkbox"/>	DMV account number (for account holders only)	
<div style="border: 1px solid black; height: 15px; width: 100%;"></div>		
<input type="checkbox"/> Check	<input type="checkbox"/> Money Order	<input type="checkbox"/> Exempt
PAYABLE TO COMMISSIONER OF MOTOR VEHICLES		

Daytime Phone No. (optional):

Check below the type of records you are requesting.

PART A

- ☒ DRIVING RECORD \$10
- ☐ VEHICLE REGISTRATION RECORD \$10
- ☐ VEHICLE TITLE RECORD \$10
- ☐ COMPLETE 19A ROSTER. PROVIDE BUS CO. FEDERAL EMPL. ID. # \$10 for each driver.
(SKIP PART B)
- ☐ DRIVER LICENSE APPLICATION Photocopy \$11
- ☐ CONVICTION Photocopy (Write ticket no. or case no. in Part B below) \$11 each
- ☐ DRIVER LICENSE SUSPENSION OR REVOCATION ORDER Photocopy (Write order # in Part B below) \$11 each
- ☐ DRINKING DRIVER PROGRAM COMPLETION CERTIFICATE Photocopy (Write ticket # in Part B below) \$11
- ☐ TICKET/SUMMONS Photocopy (Write ticket no., date of violation and offense, if known, in Part B below) \$11 each
- ☐ VEHICLE REGISTRATION/TITLE APPLICATION Photocopy \$11 each
- ☐ VEHICLE REGISTRATION SUSPENSION ORDER Photocopy \$11 each
- ☐ VEHICLE & TRAFFIC LAW BOOKS (How many? _____) \$3.50 each

PART B

Provide as much information as you know about the records you are requesting. Please print clearly.

Last Name		First	M.I.	Date of Birth (Month/Day/Year)		Sex
				/ /		<input type="checkbox"/> M <input type="checkbox"/> F
Mailing Address (Include Street & No.)		Apt. #	City		State	Zip Code
Previous New York State Address (if known)		Apt. #	City		State	Zip Code
9-digit Driver License ID Number or Number from Non-Driver ID Card		<div style="border: 1px solid black; display: inline-block; width: 150px; height: 15px;"></div>				
Plate Number		Class of Vehicle (from registration)		Year of Vehicle	Make of Vehicle	
Vehicle Identification Number (from vehicle registration)						
Ticket, Case or Order Number (if known)		Date of Violation		Offense		



New York State Department of Motor Vehicles
REQUEST FOR DRIVING AND/OR VEHICLE RECORD INFORMATION

STEP 3

The Federal Driver's Privacy Protection Act (DPPA) regulates access to Motor Vehicles records. **You must tell us why you want the records you are requesting.** Place your initials next to each permissible use you select.

☒ Use in any civil, criminal, administrative, or arbitral proceeding in any court or agency, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders or pursuant to a court order.

☐ Use by an insurer or insurance support organization or self-insured entity in claims investigations, anti-fraud activities, rating or underwriting activities.

☐ Use in providing notice to the owners of towed or impounded vehicles.

☐ Use by an employer, its agent or insurer to obtain information relating to the holder of a commercial driver's license required under Chapter 313 of Title 49 of the U.S.C.

☐ Use in preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against an individual in order to verify or correct the accuracy of personal information submitted by the individual to a legitimate business or its agents, employees, or contractors.

☐ Use required under NYS Vehicle and Traffic Law, Article 19A - Special Requirements for Bus Drivers.

☐ Use required under NYS Vehicle and Traffic Law, Article 19B - Special Requirements for Commercial Motor Carriers.

☐ Use by any government agency in carrying out its functions.

☐ Use by any private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions.

☐ Use in matters of motor vehicle or driver safety.

☐ Use in matters of motor vehicle theft.

☐ Use in matters of motor vehicle emissions.

☐ Use in matters of motor vehicle product alterations, recalls or advisories.

☐ Use in performance monitoring of motor vehicles, motor vehicle parts and dealers.

☐ Use in motor vehicle market research activities, including survey research.

☐ Use in removal of non-owner records from the original owner records of motor vehicle manufacturers.

☐ Use in the operation of private toll transportation facilities.

☐ Use by any requester who has obtained the written consent of the motorist.

☐ Use specifically authorized under NYS law, IF such use is related to the operation of a motor vehicle or public safety. Cite the specific NYS law here: _____

☐ Use in research activities and in producing statistical reports, **as long as the personal information is not published, disclosed or used to contact individuals.**

☐ **License records** without the motorist's address. These records include either the client identification number or the driver's name and date of birth, if such information has been provided by the requester.

STEP 4

I certify that I shall use the information provided by DMV only for the use described in Step 3 of this form, and that **I will comply fully with the Driver's Privacy Protection Act (18 USC Sec. 2721, et seq).** I also agree to defend, hold harmless and indemnify DMV from all actions brought against DMV, or damages alleged against DMV, for my negligent, improper or unauthorized use or dissemination of the information provided by the DMV.

REMEMBER TO ATTACH A COPY OF YOUR ID. (See Step 2 of Instructions.)

Signature ◆ _____

Date: _____

Print Name _____

To knowingly make a false statement or conceal a material fact in this written statement is a criminal offense, punishable under Penal Law Section 210.45. In addition, anyone who makes false representation to obtain any personal information from an individual's Motor Vehicles record is subject to federal criminal fines under the Driver's Privacy Protection Act (DPPA).

D. United States Postal Service (USPS)

To request USPS customer information, you must:

A. Complete and sign the ***Service of Legal Process Form*** and include a cover letter (see page 20). A sample of the Service of Legal Process form can be found on the following page (1 page total). You must fill out the following sections:

1. **Postmaster: City, State, ZIP Code**

The city, state, and zip code of your *spouse*'s last known residential address goes here.

2. **Date**

The date you are filling out the form goes here.

3. **Name**

The name of the *spouse* goes here.

4. **Address**

Your *spouse*'s last known residential address goes here.

3. **The names of all known parties to the litigation.**

Your full name and your spouse's full name goes here.

4. **Signature block**

Your signature, printed name, and address goes here.

B. Once the form has been completed and signed, send the form and cover letter to:

Postmaster

U.S. Post Office

[City of spouse's last known address], NY

[Zip code of spouse's last known address]-9998

A sample cover letter to the USPS can be found on page 20. A USPS search is complete when the Service of Legal Process Form has been returned to you.

C. On occasion, some pro se plaintiffs meet resistance from the USPS with releasing this information. If this happens, please give the Legal Hotline a call at (212) 626-7383.

Postmaster

Date _____

City, State, ZIP Code _____

REQUEST FOR CHANGE OF ADDRESS OR BOXHOLDER INFORMATION NEEDED FOR SERVICE OF LEGAL PROCESS

Please furnish the new address or the name and street address (if a boxholder) for the following:

Name: _____

Address: _____

Note: The name and last known address are required for change of address information. The name, if known, and post office box address are required for boxholder information. The following information is provided in accordance with 39 CFR 265.6(d)(4)(ii). There is no fee for providing boxholder information. The fee for providing change of address information is waived in accordance with 39 CFR 265.6(d)(1) and corresponding *Administrative Support Manual* 352.44a.

1. Capacity of requester (e.g., process server, attorney, party representing self): Party representing self
2. Statute or regulation that empowers me to serve process (not required when requester is an attorney or a party acting pro se—except a corporation acting pro se must cite statute): Party acting pro se; see 39 CFR 265.6(d)(5): "Except as otherwise provided in these regulations, names or addresses of postal customers will be furnished only as follows: (ii) To a... party who is acting pro se... Note: The term pro se means that a party is not represented by an attorney but by himself or herself."
3. **The names of all known parties to the litigation:** _____
4. The court in which the case has been or will be heard: New York County Supreme Court
5. The docket or other identifying number if one has been issued: None issued yet
6. The capacity in which this individual is to be served (e.g., defendant or witness): Defendant

WARNING

THE SUBMISSION OF FALSE INFORMATION EITHER (1) TO OBTAIN AND USE CHANGE OF ADDRESS INFORMATION OR BOXHOLDER INFORMATION FOR ANY PURPOSE OTHER THAN THE SERVICE OF LEGAL PROCESS IN CONNECTION WITH ACTUAL OR PROSPECTIVE LITIGATION OR (2) TO AVOID PAYMENT OF THE FEE FOR CHANGE OF ADDRESS INFORMATION COULD RESULT IN CRIMINAL PENALTIES INCLUDING A FINE OF UP TO \$10,000 OR IMPRISONMENT OF NOT MORE THAN 5 YEARS, OR BOTH (TITLE 18 U.S.C. SECTION 1001).

I certify that the above information is true and that the address information is needed and will be used solely for service of legal process in conjunction with actual or prospective litigation.

Signature _____

Address _____

Printed Name _____

City, State, ZIP Code _____

FOR POST OFFICE USE ONLY

- _____ No change of address order on file.
_____ Moved, left no forwarding address.
_____ No such address.

POSTMARK

NEW ADDRESS OR BOXHOLDER'S NAME AND STREET ADDRESS

From:

Name

Address

Date: _____

To:

Name

Address

To Whom It May Concern:

I am writing to inquire about the location of my spouse for service of legal process. 39 CFR § 265.6(d)(5)(ii) provides that the names or addresses of postal customers will be furnished to “a party who is acting pro se.” I am acting pro se in this action.

I have enclosed a Service of Legal Process form that includes all of the necessary information.

Thank you for your attention to this matter.

Sincerely,

Signature

Print Name

E. New York City Telephone Directories

In order to show that you have made a diligent search for your spouse through New York City telephone directories, you must:

- A. Search a phone book for *each* of the five (5) boroughs for any listing of your spouse's **full name** or **last name and first initial**. For example, "John Doe" and "J. Doe."

You can also conduct an online phone directory search, printing out the results of each search.

- B. **Call each number** that appears beside your spouse's full name or last name and first initial. You must personally verify that the person listed at that number is not your spouse.

- 1. If the person called is your spouse, you cannot proceed by service by publication.
- 2. If the person(s) called is *not* your spouse, you must include in your **affidavit in support of service by publication**:
 - i. The fact that a telephone directory search was truly and diligently done.
 - ii. How the search was conducted.
 - iii. The results of the search.

A New York City telephone directory search is complete when you have made a citywide search of the five (5) boroughs for any phone listings for your spouse's full name and last name and first initial.

F. Internet Searches

In order to show that you have made a diligent search for your spouse through internet directories, you must:

A. Search the suggested websites below for your spouse's full name in New York:

- i. <http://www.intelius.com>
- ii. <http://www.zabasearch.com>
- iii. <http://www.publicbackgroundchecks.com>

B. If you receive any search results for your spouse, you must purchase the report(s) and **call each number** to verify that the person listed at that number is not your spouse. The results of a People Search Report on Intelius typically cost \$1.95 each.

1. If the person called is your spouse, you cannot proceed by service by publication.

2. If the person(s) called is *not* your spouse, you must include in your

affidavit in support of service by publication:

- i. The fact that an internet search was truly and diligently done.
- ii. How the search was conducted.
- iii. The results of the search.

An internet search is complete when you have made a search of the five (5) boroughs for any phone listings for your spouse's full name.

G. Visitation of Spouse's Last Known Address

You must attest in your affidavit that you visited the defendant's last known address (unless the postal service search indicates that the defendant does not live at that address). "No forwarding address" is not an acceptable substitution.

III. Step 2: Affidavit in Support of Service by Publication

A sample affidavit can be found in the following pages (3 pages total). You may also be able to obtain a copy at the Office of the Self-Represented, Room 116, of the New York County Supreme Courthouse located at 60 Centre Street, New York, NY 10007. The Office of the Self-Represented can be contacted by phone at (646) 386-3025.

You must fill in all of the information in the attached affidavit. All completed search results from Step 1 should be attached to the affidavit and appropriately labeled as “Exhibits” as follows:

1. Story of marriage and marriage certificate: Exhibit A (see paragraph 5 in the sample affidavit in the following pages)
2. U.S. Military Certificates: Exhibit B
3. NYC Board of Elections Search Results: Exhibit C
4. NY State DMV Abstract of Driving Record: Exhibit D
5. USPS Service of Legal Process Form: Exhibit E
6. NYC Telephone Directories Search Results: Exhibit F
7. Internet Searches: Exhibit G.

****SAMPLE AFFIDAVIT****

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

_____,

Index No.

Plaintiff,

-against-

_____,

Defendant.

**AFFIDAVIT
IN SUPPORT OF ORDER
FOR SERVICE BY PUBLICATION
PURSUANT TO CPLR SEC. 316**

-----X

STATE OF NEW YORK
COUNTY OF _____, ss:

I, _____, being duly sworn, depose and say:

1. I am the Plaintiff *pro se* in the above captioned action.

2. This affidavit is submitted in support of my motion requesting that an order be entered authorizing the service by publication on the Defendant, _____, and dispensing with mailing pursuant to CPLR Section 316.

3. I reside at the following address

_____.

The residency requirement for divorce is satisfied based upon the following:

- ☐ The parties were married in New York State and Plaintiff is a resident thereof when the action is commenced and has been a resident for a continuous period of one (1) year immediately preceding the commencement of the action.
OR
- ☐ The parties have resided in New York State as husband and wife and Plaintiff is a resident thereof when the action is commenced and has been a resident for a continuous period of one (1) year immediately preceding the commencement of the action.
OR
- ☐ The grounds for divorce occurred in New York State and Plaintiff has been a resident thereof for a continuous period of at least one (1) year immediately preceding the commencement of the action.
OR
- ☐ The Plaintiff has been a resident of New York State for a continuous period of at least two (2) years immediately preceding the commencement of the action.

4. I married the Defendant on _____, in the City, Town or Village of _____, County of _____, State or Country of _____.

The marriage was:

- ☐ *not* performed by a clergyman, minister or by a leader of the Society for Ethical Culture; OR
- ☐ was performed by a clergyman, minister, or by a leader of the Society for Ethical Culture.

If so:

- ☐ To the best of my knowledge, I have taken all steps solely within my power to remove any barrier to the Defendant's remarriage; OR
- ☐ I will take, prior to the entry of final judgment, all steps solely within my power and to the best of my knowledge to remove any barrier to the Defendant's remarriage.

5. The current whereabouts of the Defendant, _____, are unknown to me. I have not spoken to or seen the Defendant since _____.

[A story of your marriage goes here, either by inserting it directly into the affidavit or by attaching it separately and indicating to 'see Exhibit A.' The story should include how you met your spouse, how long you dated before you were married, the date you were married, the address you lived at with your spouse, and the circumstances that led to your separation from your spouse and his/her disappearance. Your marriage certificate should also be included as part of Exhibit A.]

6. I have made diligent but unsuccessful efforts to locate the Defendant for the purpose of having him served with the summons with notice. My efforts were as follows:

I have made inquiries to the five branches of the United States Military, namely the Army, Navy, Air Force, Marines and Coast Guard, to determine whether the Defendant is in the active military service of this nation. The military had no record of the Defendant, as it appears on the certificates hereto annexed collectively as Exhibit B.

I have made inquiries to the Board of Elections of the City of New York for a search of their records to determine the address of the Defendant. A search of their records resulted in the following:

The results of the Board of Elections search of the five (5) boroughs is hereto annexed collectively as Exhibit C.

I have made inquiries to the New York Department of Motor Vehicles for a search of their records to determine the address of the Defendant. A search of their records resulted in the following:

The Abstract of Driving Record provided by the Department of Motor Vehicles for the Defendant is hereto annexed as Exhibit D.

I have made inquiries to the Post Office of the City of New York for a search of their records to determine the Defendant's present address or any forwarding address. The post office had no address for the Defendant in its records, as it appears on the Service of Legal Process form hereto annexed as Exhibit E.

I have searched the telephone directories of the five (5) boroughs of the City of New York to ascertain whether the Defendant was listed. A search of the telephone directories resulted in the following:

The results of my search through telephone directories for New York City is hereto annexed collectively as Exhibit F.

I have done an internet search for the Defendant and that search resulted in the following:

The results of my internet search is hereto annexed collectively as Exhibit G.

I have visited the last known address of the Defendant and the result of that visit is the following:

7. I do not have any knowledge of any place where the Defendant resides, works, or received mail and I am unable to secure any such information from the Defendant's friends or relatives.

8. I am unable to effect personal service on the Defendant.

9. There is no judgment in any court for a divorce in favor of either party and no matrimonial action is pending in this Court or any court of competent jurisdiction.

10. No previous application has been made by me for the same or similar relief sought herein.

WHEREFORE, I respectfully request that an order be entered directing that service of the summons with notice be made upon Defendant by publication pursuant to CPLR Section 316 and DRL Section 232 in one newspaper in the English language most likely to give the Defendant notice, that the mailing of the summons with notice to the Defendant be dispensed with in that a place where the Defendant probably would receive the mail cannot with due diligence be ascertained, and for such other relief as the Court deems just and proper.

Signed,

Plaintiff Pro Se

Print Name

Address

Phone Number

Subscribed and sworn to before me
on

Date

Notary Public
My commission expires on

IV. Step 3: Submission of Papers

There are two sets of forms that need to be submitted to the court in divorce proceedings where the other spouse is served notice by publication. These packets should be labeled **Packet 1** and **Packet 2**.

Packet 1 contains the papers for a divorce:

- i. The original and three (3) copies of the Summons With Notice (see pages 30-31);
- ii. The three parts of the application for a Poor Person Order (if applicable); and
- iii. The forms needed to purchase an index number

Packet 2 contains the papers for service by publication:

- i. Affidavit in Support of Order for Service By Publication, along with attached exhibits of marriage story and search results (see pages 23-26)
- ii. Order of Publication (see pages 32-33)
- iii. Sample of how the publication will appear in the newspaper

Below is a step-by-step process of how to submit these papers:

a. Step 1 - Sample of Publication

First, you will need to obtain a sample of how the publication will appear in the newspaper. To do this, you will need to contact the newspaper, explain that you are doing service by publication in a divorce proceeding and that you need a sample for the judge to sign off on the Order of Publication. You will need to provide the newspaper with your Summons With Notice (see pages 30-31) so that you may receive a proof from them. If you have a Poor Person Order, you may also want to provide that so you get a discounted rate.

The court generally directs that the publication be made in the *New York Law Journal*. You may reach the public notice department at the *New York Law Journal* at (866) 305-3058. The number for the advertising department is (347) 227-3145.

A sample Summons With Notice can be found on pages 30-31. You must fill in:

1. The date the summons was filed
2. Your name (as Plaintiff), your spouse's name (as Defendant)
3. Your address
4. The date
5. Your signature, printed name, address and phone number
6. Which party may resume use of the maiden name and the maiden name

b. Step 2 – Bring Packet 1 to New York County Supreme Court

Second, you need to bring **Packet 1** to the New York County Supreme Court, which is located at 60 Centre Street. You must bring **Packet 1** to the Office for the Self-Represented, which is in Room 116 on the first floor. The Office for Self-Represented will then process your paperwork, which takes approximately 24-48 hours. Call them at (646) 386-3025 to check before you return to the courthouse.

c. Step 3 – Get Index Number

Once the Poor Person Order has been signed, go back to the courthouse. This time, bring **Packet 2** along with you. First, you will need to pick up your documents from Room 116. Then bring those documents to the basement and go to the Law & Equity Center in Room 141 b. There, you will get an index number. Save the stub with the index number on it – you will need this throughout the process. The index number is in **black** ink.

d. Step 4 – Summons With Notice

Give the three copies of the summons with notice to the Law & Equity counter and date stamp them. Write your index number on the front of each Summons With Notice next to where it says “Index No.”

e. Step 5 – Bring Packet 2 to the Ex Parte Office

Now bring **Packet 2** with you to the Ex Parte Office, room 315. **Packet 2** must contain the affidavit, the order of publication (see pages 32-33), and the sample of the publication that you received from the newspaper earlier.

A sample proposed order of publication can be found on pages 32-33. You may also be able to obtain a copy at the Office of the Self-Represented, Room 116, of the New York County Supreme Courthouse located at 60 Centre Street, New York, NY 10007. The Office of the Self-Represented can be contacted by phone at (646) 386-3025.

You can use the order of publication found on pages 32-33, filling in the following information:

2. The index number: your name (as Plaintiff), your spouse’s name (as Defendant)
3. Title of the action
4. Your name, as Plaintiff
5. Date affidavit was notarized
6. Your spouse’s name, as Defendant

SAMPLE ONLY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

Index No.

Date Summons Filed:

_____ ,

Plaintiff designates New York County as the
place of trial.

The basis of venue is Plaintiff's residence.

Plaintiff,

SUMMONS WITH NOTICE

- against -

Plaintiff resides at _____

_____.

_____ ,

Defendant.

-----X

ACTION FOR DIVORCE

To the above named Defendant:

YOU ARE HEREBY SUMMONED to serve a notice of appearance on the Plaintiff within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear, judgment will be taken against you by default for the relief demanded in the notice set forth below.

Dated: _____

Plaintiff Pro Se Signature

Type Name
Plaintiff Pro Se

Address

Phone Number

NOTICE: The nature of this action is to dissolve the marriage between the parties, on the grounds: DRL Section 170 subd. (2) – the abandonment of the Plaintiff by the Defendant for a period of more than one year.

The relief sought is a judgment of absolute divorce in favor of the Plaintiff dissolving the marriage between the parties in this action. The nature of any ancillary or additional relief demanded is:

That and the Family Court of New York County shall have concurrent jurisdiction with the Supreme Court with respect to any future issues of maintenance and support.

That either party may resume the use of a prior surname.

That the [Plaintiff/Defendant] may resume use of her maiden name, _____.

That the Court grant such other and further relief as the Court may deem just and proper.

The parties have divided up the marital property, and no claim will be made by either party under equitable distribution.

Notice under DRL Section 177: The Defendant is advised that [he/she] may no longer be covered by the Plaintiff's health insurance plan upon the entry of a judgment of divorce and that the Defendant may be responsible for her own health insurance coverage.

Notice of Automatic Orders: Pursuant to Domestic Relations Law Section 236 Part B, Section 2, the parties are bound by certain automatic orders which shall remain in full force and effect during the pendency of the action. For further details you should contact the clerk of the Matrimonial Part, Supreme Court, 60 Centre Street, New York, N.Y. 10007-1474 Tel (646) 386-3010.

(Form UD-1 – 5/99)

At the Matrimonial Part/IAS Part of
the New York Supreme Court at the
Courthouse, New York County, on

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Present:

Hon. _____, Justice
-----X

_____, Index No.

Plaintiff,

- against -

**ORDER OF
PUBLICATION**

_____,
Defendant.
-----X

Upon the reading of the Summons in the above-entitled action and the annexed
Affidavit of the Plaintiff, _____, sworn to on _____, the exhibits
thereto, and upon all the proceedings heretofore had herein, and it appearing that the Plaintiff has
been and will be unable with due diligence to make service of the summons with notice upon the
Defendant by another prescribed method:

Now, on motion of _____, Plaintiff Pro Se, it is hereby:

ORDERED, that the summons with notice in the above entitled action be served on
the Defendant, _____, by publishing the same, together with notice to the
Defendant, and a brief statement about the nature of the action, pursuant to CPLR Sec. 316, in one
newspaper, to wit: The New York Law Journal, as such newspaper being most likely to give notice to
said Defendant, to be published in the County of New York, the State of New York, once a week for
three consecutive weeks, and it is further

ORDERED, that the publications of the summons with notice shall be made within thirty days after this order is granted, and it is further

ORDERED, that it appearing that the Plaintiff cannot ascertain a place where the Defendant would probably receive matter transmitted through the United States Post Office, the mailing pursuant to CPLR Sec. 316 is hereby dispensed with, and it is further

ORDERED, that the summons and complaint, or summons with notice, order and papers upon which this order is based shall be filed on or before the first day of publication.

Dated:

ENTER:

J.S.C.

V. Step 4: Publication

Once the order of publication has been granted, you must submit information to *The New York Law Journal*, or to whichever newspaper has been designated by the order of publication. To publish, you must provide the newspaper with the following:

1. **Title of action:** your name (as Plaintiff), your spouse's name (as Defendant)
2. The Order to Serve by Publication
3. Summons With Notice
 - i. **Index number**
 - ii. **Your address**
4. A copy of the Poor Person Order, if applicable.

The newspaper must publish the Summons With Notice once a week for three consecutive weeks. Because there is usually a wait time of at least a week to be published in the newspaper, it is advised that you submit the materials to the newspaper as soon as possible.

After your Summons With Notice has been published once a week for three consecutive weeks, then you must receive a sworn statement from a clerk at the newspaper that the advertisement has been published for three consecutive weeks. This statement must be signed and notarized. An example of a sworn statement along with an attached publication can be found on the next page (1 page total).

STATE OF NEW YORK

County of New York, s:

SUMMONSES

SUPREME COURT OF
THE STATE OF NEW
YORK — COUNTY OF
NEW YORK — Index No.
Date Summons
Filed, — Plaintiff des-
ignates New York County
as the place of trial. — The
basis of venue is CPLR Sec.
509. — SUMMONS WITH
NOTICE Plaintiff re-
sides at

Plaintiff -
against -
Defendant. — ACTION
FOR DIVORCE

To the above named De-
fendant: YOU ARE HERE-
BY SUMMONED to serve a
notice of appearance on
the Plaintiff within twenty
(20) days after the service
of this summons, exclusive
of the day of service (or
within thirty (30) days after
the service is complete if
this summons is not per-
sonally delivered to you
within the State of New
York); and in case of your
failure to appear, judg-
ment will be taken against
you by default for the relief
demanded in the notice set
forth below
Dated:

Plaintiff Pro Se

NOTICE: The nature of
this action is to dissolve the
marriage between the par-
ties, on the grounds: DRL
Section 170 subd. (2) - the
abandonment of the Plain-
tiff by the Defendant for a
period of more than one
year.

The relief sought is a
judgment of absolute di-
vorce in favor of the Plain-
tiff dissolving the marriage
between the parties in this
action. The nature of any
ancillary or additional re-
lief demanded is:

That and the Family
Court of New York County
shall have concurrent ju-
risdiction with the Su-
preme Court with respect
to any future issues of
maintenance and support.

That either party may re-
sume the use of a prior sur-
name.

That the Plaintiff may re-
sume use of her maiden
name,

That the Court grant
such other and further re-
lief as the Court may deem
just and proper.

The parties have divided
up the marital property,
and no claim will be made
by either party under equi-
table distribution.

Notice Under DRL Sec-
tion 177: The Defendant is
advised that he may no
longer be covered by the
Plaintiff's health insu-
rance plan upon the entry
of a judgment of divorce
and that the Defendant
may be responsible for his
own health insurance cov-
erage.

1265821

July 13 - M. July 27

, being duly sworn, says that she is the
PRINCIPAL CLERK of the Publisher of the **NEW YORK LAW
JOURNAL**, a Daily Newspaper; that the Advertisement hereto
annexed has been published in the said **NEW YORK LAW
JOURNAL** in each week for 3 successive weeks, commencing
on the 13th day of July, 2009.

TO WIT: JULY 13, 20, 27, 2009

SWORN BEFORE ME, this 27th day
Of July, 2009.

Notary Public, State of New York

No.

Qualified in
Commission Expires

VI. Step 5: Proceed With Your Final Papers

Once the newspaper publication has ran once a week for three consecutive weeks, you may proceed with filing your divorce papers and finalizing the process.

VII. Resources

If you have any questions, please feel free to contact the Legal Hotline at (212) 626-7383.