

The information provided here is general and may not apply to your specific case. Service can be complicated and it is very important that it is done right. If you are not sure how you must serve your paperwork, ask a lawyer. The three primary areas where service is required: subpoenas, service of original suits, and of subsequent pleadings. The “service of process” of the original suit on persons is addressed below.

SERVICE of PROCESS on PERSONS

•What is service and citation?

The law requires that the party(s) being sued is given “formal notice of the certified copy of the petition” that you filed (**service**); time delays in which to respond, date of issuance, person being cited, title and location of the court, and/or notice of any court dates set in the case (**citation**). These provide “due process” to the other party(s). Until the other party(s) has been properly *served*, the Court cannot make any permanent orders or resolve the dispute.

•Are service and citation required in all cases?

They are required in all civil cases except *summary* and *executory* proceedings, *C.C. Art. 102* divorces, and juvenile cases. Without them, “all proceedings are absolutely null.”

•Are there time delays for requesting *the service and citation* once the case has been filed?

Service of the citation must be requested on all named defendants within ninety days of the commencement of the action.

•Who can serve the citation?

Except as otherwise provided by law, service shall be made by the sheriff of the parish where service is to be made or of the parish where the action is pending. *Providing information such as “the best time to serve,” the color of the house, or even a photo of the defendant can be useful to the sheriff.*

•What if you do not know the defendant’s address?

A conscientious search must be made to locate the whereabouts of the defendant before you can ask for the court to “classify” the defendant as an *absentee*. *See* (4) below. Here are some inexpensive tips to track someone down:

- a. Send a letter to the person’s last address. Under your return address, add and write “Return Service requested. Do not Forward.” If the defendant filed an address change with the USPS, you will get the letter back with the new address. Get more information from the USPS;
- b. Call “411” for the city or cities where you think the person may live or work;
- c. Search free online telephone directories or reverse telephone directories;
- d. Search online sites that search for people for a small fee;
- e. Search social networking sites;
- f. Contact friends or relatives of the defendant;
- g. Search property records at the courthouse;
- h. If you believe the person is in a Louisiana state prison, contact the Louisiana Department of Corrections; <http://www.doc.la.gov/pages/contact-us/institutions/> ;
- i. If you believe the person is in a federal prison, contact the Federal Bureau of Prisons <http://www.bop.gov/iloc2/LocateInmate.jsp> ;
- j. For parish jail, contact your local sheriff.

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● **How service of process on persons can be accomplished (types):**

1. **Personal:**

Personal service (in Louisiana) is made when a proper officer directly tenders the citation or other process to the person(s) to be served. It can be made wherever the defendant can be reached. Personal service is a requirement when service is made at the defendant's place of employment or when the defendant is temporary living at someone else's residence.

2. **Domiciliary:**

Domiciliary service (in Louisiana) on the other hand, is made when a proper officer leaves the citation or other process with another person who is of suitable age (usually over the age of 12) and discretion residing at the defendant's principal place of residence. It is considered his principal place of dwelling (domicile) if it is his residence and he has the intent (usually evidenced by such things as: utility bill, mail, has lived there for at least six months, voter registration, driver's license, etc.) to remain in place there.

Note:

- Going forward in the legal proceeding, it is a good practice to establish the relationship between the defendant and the person who accepted service at the residence. Example: "Service was made *domiciliary* on 04 September 2013, on Jane Doe, who is the girl friend of the defendant."

3. **Waiver:**

The defendant can also expressly waive citation and service thereof by any written waiver (a sworn affidavit is required in divorces). A certified copy of the petition that you filed with the Court must be given to the defendant before the *waiver* is executed. It is the responsibility of the petitioner to get a certified copy from the Clerk of Court to send off to the defendant. This process is usually accomplished by mailing a *waiver* (affidavit form acknowledging receipt of a certified copy of the petition; waiving formal citation; service of process; all legal delays; notice of trial; and appearance at trial) and the certified copy of the petition to the defendant (in Louisiana or even out of state). A default judgment can be obtained once the *waiver* is filed in the suit record.

4. **Absentee:**

When a person's whereabouts is not known or when the person cannot be found and served even after a conscientious effort, though he may be domiciled or actually present in the state or elsewhere. In such cases, you must seek to have an attorney at law appointed (commonly referred to as a curator) by the court to represent the absentee defendant. The petitioner is responsible for the costs associated with the services of a *curator* and this can run as much as \$400 or higher.

Notes:

- A person whose whereabouts is known within or out of state is not an *absentee* and a *curator* should not be appointed to represent that person. A judgment obtained with this improper procedure is null.
- A *diligent* or conscientious effort on the part of the petitioner usually involves but is not limited to: last known address, telephone book, friends and relatives, internet, *See also* (What if you do not know the defendant's address?) tips above.

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5. Non-resident of Louisiana but in USA:

A sheriff in Louisiana is not authorized to make service of process in another state. The Clerk of Court where the petition has been filed will therefore not facilitate service on out-of-state defendants. It is the responsibility of the petitioner to facilitate service. **First**, a certified copy of the petition and the citation is obtained from the Clerk of Court. **Second**, a person who resides in another state can be served (using what is referred to as the *long-arm-service*) in the following ways:

- (a). **Registered or certified mail** at his place of domicile or postal address. This involves the use of the US postal service or a commercial courier (Fed Ex; UPS, etc.);
- (b). **Authorized Officer** who can make service where the defendant resides. This will usually require the process being mailed to a sheriff in another state with an accompanying affidavit ...if the out-of-state sheriff does not have one. A fee is usually charged by the out-of-state sheriff;
- (c). **Private process server** authorized by the court.

Notes:

- **Third**, a default judgment cannot be rendered against a defendant and no hearing can be held (except for domestic violence protective order cases) until thirty (30) days after the filing in the suit record of the *long-arm-service affidavit* of the individual who either:
 - (i). Mailed the process to the defendant, showing that it was enclosed in an envelope with proper postage and properly addressed; the contents (citation and certified copy of the petition) of the envelope; and the date it was deposited in the US mail. To this affidavit, the return receipt (green card) must be attached; or
 - (ii). Utilized the services of a commercial courier to make delivery of the process to the defendant, showing the name of the commercial courier; the date; the address at which the process was delivered to the defendant. To this affidavit, the commercial courtier's confirmation of delivery must be attached; or
 - (iii). Actually delivered the process to the defendant, showing the date, place, and manner of delivery.

6. Non-resident of Louisiana and in another country:

This type of service can be the most complicated and expensive. See http://travel.state.gov/law/judicial/judicial_680.html for countries that allow service by international mail and the rules under *The Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters*.

7. Incarcerated person in Louisiana:

The Clerk of Court where the suit is filed will facilitate service. If in the same parish, the service is usually made personally on the inmate in jail. If the inmate is out of parish, the process is sent to the Sheriff where the inmate is located. In most instances they will "deliver" the process to the warden at the prison facility and this is where additional safeguards of the process (delivery of the citation and certified copy of the petition) is provided by law.

Notes:

- Providing the inmate's details such as the DOC number is helpful. See <http://www.doc.la.gov/quicklinks/offender-info/offender-locator/>
- When service is made on the warden or his designee at the prison, proof of that service may be filed in the suit record of the affidavit of the prison official who served the citation and certified copy of the petition on the incarcerated person. You may have to provide a fill-in-the-blank affidavit for the prison official (usually done by sending it to the Clerk of Court with the petition).
- If that affidavit is not forthcoming, the petitioner is able to rely on the *notice of service* from the clerk of court that the prison official/incarcerated person was served. But, service will be deemed to have been accomplished, ten (10) days from when the prison official received the process.

8. Incarcerated person out of State:

This type of service is somewhat complicated as there is an overlapping of service under the *long-arm-service* statute and service on an incarcerated person. It also depends on whether the inmate is in federal prison or state prison. Service in federal prisons usually requires that the local authorized person in that state (sheriff or constable) make the service. The Clerk of Court where the suit has been filed will not make service for out-of-state defendants. The petitioner has to facilitate it.

Notes:

- For federal prison requirements and more information, See: <http://www.bop.gov/iloc2/LocateInmate.jsp>
- It is advisable to call the prison facility to find out what is needed as well as applicable costs. An affidavit may need to be provided to the out-of-state warden or sheriff.
- Obviously, the petitioner will need to mail the process by certified or registered mail to the person authorized to make service in the other state (similar to the *long-arm-service* statute).
- The resulting *proof of service* that gets submitted to the court should include: the petitioner's affidavit and green card receipt that that process was mailed out together with the affidavit of the prison officer or authorized person that they did make service on the defendant.
- Since you are likely to incur a fee for the out-of-state service, there is a greater likelihood that the prison officer or authorized person will execute and return an affidavit evidencing that service was made. But, if no affidavit is forthcoming, the petitioner could rely on the *long-arm-service* receipt. Service (cautious in covering all bases) could be deemed to have been accomplished, ten (10) days from when the prison official signed the green card plus the thirty (30) days from when your *long-arm-service affidavit* is filed into the suit record, for a total of forty (40) days.

9. Private Process Server:

When the sheriff has been unable to make service on the defendant (there could be multiple reasons such as: "dodging" service of process, can't be located, etc.), upon a *Motion* of a party, the court will appoint a qualified (a licensed Louisiana private investigator shall be presumed qualified) person over the age of 18, not a party to the case, and who resides in Louisiana to make service of process in the same manner as is required of Sheriffs. The party requesting the services of the server is responsible for any costs. The private process server is usually required to submit an affidavit of **how** (domiciliary or personal) and **when** (date and time) the service of process was made on the defendant.

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Notes:

- The party making the *Motion* is responsible for facilitating the service through the private process server. This involves sending the private process server the citation and certified copy of the petition that needs to be served.
- Most licensed process servers have their own affidavit of service. Upon receipt, the petitioner is required to file this affidavit into the suit record.

10. General:

Subsequent to the original petition, unless a pleading(s) needs to be served by the Sheriff, all parties to the litigation must provide each other (by mail or fax), copies of pleadings that are being filed with the Clerk of Court. A certificate of service must be filed in the suit record that this has been done and this is usually done within the pleading that is being filed.