

## SERVICE OF DOCUMENTS

### A GUIDE FOR SELF-REPRESENTED LITIGANTS

**Service** of a document is the process of making sure that any person who is required to be given a copy of an application to the Court or any other legal document is given it in a way which complies with the relevant legal rules.

The relevant legal rules are in the *Uniform Civil Procedure Rules 2005*.

#### **Originating Process**

The first important rule relates to the requirements for giving notice of the original application in any proceeding to the other people who are parties to the proceeding. Such an application commencing a proceeding is called an **originating process**.

An **originating process** is required to be served personally on the respondents named in the originating process. This is called **personal service** (**personal service** is required by Part 6 rule 2(3) and Part 10 rule 20(2)(a) of the *Uniform Civil Procedure Rules*).

The Uniform Civil Procedure Rules describe how **personal service** is to be carried out when it is service on an individual. The Uniform Civil Procedure Rules also describe how **personal service** is to be carried out when it is service on a company or some other body that is deemed to be a corporation (such as a local council or an owner's corporation of a strata plan). The Uniform Civil Procedure Rules are quite precise about service of **originating process**.

For **personal service** on an individual, Part 10 rule 21 sets out the requirements:

#### **10.21 How personal service effected generally**

- (1) *Personal service of a document on a person is effected by leaving a copy of the document with the person or, if the person does not accept the copy, by putting the copy down in the person's presence and telling the person the nature of the document.*
- (2) *If, by violence or threat of violence, a person attempting service is prevented from approaching another person for the purpose of delivering a document to the other person, the person attempting service may deliver the document to the other person by leaving it as near as practicable to that other person.*

- (3) *Service in accordance with subrule (2) is taken to constitute personal service.*

For service on a corporation or a body deemed to be a corporation, the requirements of the Uniform Civil Procedure Rules are in Part 10 rule 22:

**10.22 Personal service on corporation**

Personal service of a document on a corporation is effected:

- (a) by personally serving the document on a principal officer of the corporation, or
- (b) by serving the document on the corporation in any other manner in which service of such a document may, by law, be served on the corporation.

The *Uniform Civil Procedure Rules* also make special provision relating to somebody who remains in premises to which a person attempting service cannot lawfully or practicably obtain access (such a person is described by the rules as one who “keeps house”). These special provisions are in the following terms:

**10.26 Personal service on person who “keeps house”**

- (1) If a person keeps house (that is, remains in premises to which a person attempting service cannot lawfully or practicably obtain access), the person attempting service may serve the document on the person keeping house:
  - (a) by doing one of the following:
    - (i) placing the document in the mail-box for the premises,
    - (ii) affixing the document to an outer door of the premises,
    - (iii) if the person attempting service cannot lawfully or practicably obtain access to any such mail-box or door, affixing the document to some part of the premises, or to some fence or wall surrounding the premises, as near as practicable to the principal door or entrance to the premises, and
  - (b) within 24 hours after doing so, by posting a notice to the premises, addressed to the person keeping house, informing the person of the fact that the document has been so placed or affixed.

- (2) Service in accordance with subrule (1) is taken to constitute personal service.

### **What do I do if I am unable to serve a document?**

If you are unable to serve a document, it is possible to make an application to the court for what is called an **Order for Substituted Service**. This is governed by part 10 rule 14 of the *Uniform Civil Procedure Rules*.

#### **10.14 Substituted and informal service generally**

- (1) If a document that is required or permitted to be served on a person in connection with any proceedings:
  - (a) cannot practicably be served on the person, or
  - (b) cannot practicably be served on the person in the manner provided by law,the court may, by order, direct that, instead of service, such steps be taken as are specified in the order for the purpose of bringing the document to the notice of the person concerned.
- (2) An order under this rule may direct that the document be taken to have been served on the person concerned on the happening of a specified event or on the expiry of a specified time.
- (3) If steps have been taken, otherwise than under an order under this rule, for the purpose of bringing the document to the notice of the person concerned, the court may, by order, direct that the document be taken to have been served on that person on a date specified in the order.
- (4) Service in accordance with this rule is taken to constitute personal service.

Such an application must be made by filing a notice of motion with the Court. The standard form of notice of motion is attached. This form may be accessed electronically through the “Forms & Fees” page on the Court’s web site – <http://www.lawlink.nsw.gov.au/lec>

The Court does not automatically grant an application for an **Order for Substituted Service** and you will also need to file an affidavit:

- (a) explaining why the document cannot practicably be served on the person or cannot practicably be served in the manner

required by the rules (including details of any unsuccessful attempts that have been made to serve the person); and

- (b) stating the method of substituted service you propose (eg by leaving the document at the person's last known place of residence or business, or with a named relative or friend or business acquaintance, or by advertising in a newspaper); and
- (c) indicate whether the proposed method is likely to bring the proceedings to the notice of the person to be served. The Court must be satisfied that your proposed method of service is one which is reasonably likely to bring the proceedings to the notice of the person.

You must also attend Court on the day listed for your motion to be heard. However, this Court attendance, depending on where you are located, can be undertaken by telephone rather than coming to the Court.

If the Court makes an **Order for Substituted Service**, the terms of that Order will be set out in writing. A copy of the **Order for Substituted Service** will need to accompany the documents that are being served in the fashion authorised by the **Order for Substituted Service**.

### **What about serving follow-up documents?**

Serving documents after the **Originating process** has been served is permitted in a wider range of ways. These are set out in Part 10 rule 5:

#### **10.5 The various methods of service**

- (1) Subject to these rules, a document may be served on a person:
  - (a) by means of personal service, or
  - (b) by posting a copy of the document, addressed to the person:
    - (i) to the person's address for service, or
    - (ii) if the person is not an active party, to the person's business or residential address, or
  - (c) by leaving a copy of the document, addressed to the person:
    - (i) at the person's address for service, or

- (ii) if the person is not an active party, at the person's business or residential address,  
  
with a person who is apparently of or above the age of 16 years and apparently employed or residing at that address, or
  - (d) in the case of service on a corporation, by serving the document on the corporation in any manner in which service of such a document may, by law, be served on the corporation.
- (2) In the case of a person having an address for service that is a solicitor's office address, service of a document on the person may also be effected:
  - (a) if the notice advising the address for service includes a DX address, by leaving a copy of the document, addressed to the solicitor, in that DX box at that address or in another DX box for transmission to that DX box, or
  - (b) if the notice advising the address for service includes a fax number, by faxing a copy of the document to that number, or
  - (c) if the notice advising the address for service includes an electronic service address, by transmitting an electronic copy of the document to that address.
- (3) Unless the contrary is proved, the time at which a document is taken to have been served is:
  - (a) in the case of a document that is left in a DX box in accordance with subrule (2) (a), at the end of the second day following the day on which the copy is so left, or
  - (b) in the case of a copy of a document that is faxed in accordance with subrule (2) (b), at the end of the first day following the day on which the copy is so faxed.

## NOTICE OF MOTION

### COURT DETAILS

Court

#Division

#List

Registry

Case number

### TITLE OF PROCEEDINGS

[First] plaintiff **[name]**

#Second plaintiff #Number  
of plaintiffs (if more than  
two)

[First] defendant **[name]**

#Second defendant  
#Number of defendants (if  
more than two)

### FILING DETAILS

Person seeking orders **[name]** [#role of party eg defendant #applicant  
(if not a party to the proceedings)]

#Filed in relation to [eg plaintiff's claim, (number) cross-claim]  
[include only if form to be eFiled]

#Legal representative [solicitor on record] [firm]

#Legal representative  
reference [reference number]

Contact name and  
telephone [name] [telephone]

### PERSON AFFECTED BY ORDERS SOUGHT

**[name]** [role of party eg plaintiff #respondent (if not a party to the  
proceedings)]

### HEARING DETAILS

This motion is listed at [time, date and place to be inserted by the registry  
unless otherwise known (Court registry will leave blank if being dealt with in  
chambers.)].





## #FURTHER DETAILS ABOUT RESPONDENT[S]

[A person is a respondent only if not already a party to the proceedings.]

### Respondent

Name

Address

#[unit/level number]

#[building name]

[street  
number]

[street name]

[street type]

[suburb/city]

[state/territory]

[postcode]

#[country (if not Australia)]