

Service of Summons and Complaint

The plaintiff **must serve** the defendant(s) by personal service, substituted service, or publication. [Wis. Stats. 799.12(2), (3), (4)]

Service Must Be Timely

(b) Except in eviction actions, the return date for a summons served upon a resident of this state shall be not less than 8 days nor more than 30 days from the issue date, and service shall be made not less than 8 days prior to the return date.

In eviction actions, the return date for a summons served upon a resident of this state shall be not less than 5 days nor more than 25 days from the issue date, and service shall be made not less than 5 days prior to the return date. 799.05(3) (b)

(c) The return date for a summons served upon a nonresident of this state shall be not less than 20 days from the issue date. 799.05(3) (c)

In Dane County, the days listed above are business days.

Money Judgment Actions (\$10,000 Limit)

When a summons and complaint is filed with the "claim under dollar limit" box checked, the plaintiff shall pay the required filing fee.

1. The plaintiff must attempt personal service through a private process server or sheriff's department. The plaintiff will pay the service fees directly to the process server or sheriff. Once service is obtained, an "Affidavit of service" must be filed with the Clerk's Office to confirm service. A copy of the service bill should also be filed at this time.
2. If with reasonable diligence the defendant cannot be served by personal or substituted service, the plaintiff may obtain service by mailing and publication. **Diligent attempts to effect personal service must be made prior to service by publication.**
 - a. The plaintiff will contact the clerk's office for a new return date. To allow for publication, the telephone staff will verbally provide a new return date up to four (4) weeks away.
 - b. The plaintiff must then file Form SC-5160V, Small Claims Publication Summons and Notice and publish one time in the newspaper most likely to give notice to the affected person(s). The plaintiff must also mail a copy of the Publication Summons and Notice and a copy of the claim (Summons and Complaint) to the last know address of the defendant(s). The plaintiff must file an Affidavit of Mailing (Form SC-5130V) that this has been done.

- c. CCAP scheduled activity will show the adjourned return date once Dane county COC receives SC-5160 completed form. When any other document is filed or no document is filed a review date for the 90th date may be set in place of adjourned return date. Per statute 801.02(1) a case will be dismissed after the 90th date without proof of service.
- d. The plaintiff must file the original "proof of publication" and a publication bill received from the newspaper with the clerk's office upon receipt.

The defendant **MUST BE** served with copy of summons and complaint, or publication completed, within 90 days after filing or the action will be dismissed by the court. 801.02(1).

Eviction and Replevin Actions

When a summons and complaint is filed in an eviction or replevin action, the plaintiff must pay the required filing fee and obtain personal service on the defendants.

1. The plaintiff must obtain personal service through a private process server or the sheriff's department. The plaintiff is to pay the service fees directly to the process server or sheriff. Once service is obtained, an "Affidavit of Service" must be filed with the clerk's office to confirm service. A copy of the service bill should also be filed at this time.
2. **In Eviction Actions:** If with reasonable diligence the defendant cannot be served by personal or substituted service, the plaintiff may obtain service by having the process server do a "posting and mailing" as follows:
 - a. At least seven business days prior to the return date, the process server will post a copy of the summons and complaint onto some part of the defendant's premises where it may be conveniently read.
 - b. The process server will mail an additional copy of the summons and complaint to the defendant's last known address at least five business days prior to the return date.
 - c. The process server will file an affidavit indicating that they have done so with the COC's office.

NOTE: The Dane County Sheriff's Department does not provide further actions after attempting due diligence. They will not do a posting and mailing.

NOTE: The defendant is to be served with a copy of the summons and complaint within 90 days after filing or the action will be dismissed by the court. (Sec. 801.02(1), Stats)

3. **In Replevin Actions:** If with reasonable diligence the defendant cannot be served by personal or substituted service (e.g. served on a roommate), the plaintiff may obtain service by publication. **Diligent attempts to effect personal service must be attempted prior to service by publication.**
 - a. The plaintiff will contact the clerk's office for a new return date, after an Affidavit of Non-Service has been filed with the courts OR the plaintiff may appear at the hearing to get a new publication date from the commissioner. The plaintiff should call the eviction line at 608-283-4885 and specify that this is for a replevin publication. The clerk will return the call to schedule OR the plaintiff may appear at the scheduled hearing date/time to get a new hearing date for publication, up to 4 weeks out.
 - b. The plaintiff must then file with the court Form SC-5160V, Small Claims Publication Summons and Notice. Once received back from court, publish one time in the newspaper most likely to give notice to the affected person(s). The plaintiff must also mail a copy of the Publication Summons and Notice and a copy of the claim (Summons and Complaint) to the last know address of the defendant(s). The plaintiff must file an Affidavit of Mailing (Form SC-5130V) that this has been done.
 - c. The plaintiff must file the original "proof of publication" and a publication bill received from the newspaper with the clerk's office upon receipt prior to judgment.