

SRL Conference
Small Claims Issue

May 22, 2009

Presented By:

Albert Balingit
Attorney
California Dept. of Consumer Affairs

William T. Tanner
Directing Attorney
Legal Aid Society of Orange County

NAMING THE DEFENDANT

It is important to know the proper name of the person or business you are suing. Many people make the mistake of naming a business based solely off the name stated on the establishment or business card.

Many people also make the mistake of naming an auto insurance company as the defendant in a case arising out of a car accident. You want to name the driver and the owner of the vehicle in cases regarding car accidents, never the insurance company.

*You can find more detailed information regarding naming the defendant by viewing fact sheet **#22 Naming the Defendant** and fact sheet **#4 Auto Accident: Who to Sue**. Copies of these fact sheets are included in your manual and can be found online at www.ocsmallclaims.com.*

SERVING

There are three different ways to serve a claim.

CCP 116.340(a) Service of the claim and order on the defendant may be made by any one of the following methods:

Certified Mail through Clerk's Office

CCP 116.340 (1) The clerk may cause a copy of the claim and order to be mailed to the defendant by any form of mail providing for a return receipt.

Some courts prefer this method, others do not. I personally never recommend this method unless the agent is CT Corporation or CSC-Lawyers Incorporating Service. I know those agents accept service and our clerks will not reject the return receipts from those agents.

One problem here is that the plaintiff has no control over whether the defendant picks up the mail, signs the receipt, whether someone else signs the receipt, whether the signature is legible.

Personal Service (15/20 days)

CCP 116.340 (2) The plaintiff may cause a copy of the claim and order to be delivered to the defendant in person.

This is a good method and in many counties the Sheriff will attempt service. The problem is that the Sheriff does not treat it like a criminal case. I have had

plaintiffs complain that the defendant answered the door when the sheriff attempted service and the defendant stated that the defendant no longer lives at that address.

I usually recommend the plaintiff take a buddy with them to serve. Personal service can be done anywhere the defendant is found. You are not required to serve the defendant at their home or place of business.

Substituted Service (25/30 days)

CCP 116.340 (3) The plaintiff may cause service of a copy of the claim and order to be made by substituted service as provided in subdivision (a) or (b) of Section 415.20 without the need to attempt personal service on the defendant. For these purposes, substituted service as provided in subdivision (b) of Section 415.20 may be made at the office of the sheriff or marshal who shall deliver a copy of the claim and order to any person authorized by the defendant to receive service, as provided in Section 416.90, who is at least 18 years of age, and thereafter mailing a copy of the claim and order to the defendant's usual mailing address.

Substituted can be used as the first attempt at service. You do not need to first try personal service in order to complete substituted service. Substituted service must be done at the defendant's home or place of business. This is great for businesses.

Proof of Service

CCP 116.340 (b) Service of the claim and order on the defendant shall be completed at least 15 days before the hearing date if the defendant resides within the county in which the action is filed, or at least 20 days before the hearing date if the defendant resides outside the county in which the action is filed. (c) Proof of service of the claim and order shall be filed with the small claims court at least five days before the hearing.

CCP 116.340 (d) Service by the methods described in subdivision (a) shall be deemed complete on the date that the defendant signs the mail return receipt, on the date of the personal service, as provided in Section 415.20, or as established by other competent evidence, whichever applies to the method of service used.

(e) Service shall be made within this state, except as provided in subdivisions (f) and (g).

The person who served the claim must fill out an SC-104 form to establish proof of service. The SC-104 form is basically a declaration stating who was served, when and where.

*You can find more detailed information regarding serving the defendant and establishing proof of service by viewing fact sheet #26 **Service: How Do You Serve the Defendant?** A copy of this fact sheet is included in your manual and can be found online at www.ocsmallclaims.com*

Serving Out of State Owners of Real Property

Renters usually sue over the return of their security deposits. The owner of the rental property does not always live within the state at the time of filing

CCP 116.340 (f) The owner of record of real property in California who resides in another state and who has no lawfully designated agent in California for service of process may be served by any of the methods described in this section if the claim relates to that property.

Serving Landlords (When the tenant does not know the address)

CC 1962 (a) Any owner of a dwelling structure specified in Section 1961 or a party signing a rental agreement or lease on behalf of the owner shall do all of the following:

(1) Disclose therein the name, telephone number, and usual street address at which personal service may be effected of each person who is:

(A) Authorized to manage the premises.

(B) An owner of the premises or a person who is authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for all notices and demands.

CC 1962.7 In the event an owner, successor owner, manager, or agent specified in Section 1961 fails to comply with the requirements of this chapter, service of process by a tenant with respect to a dispute arising out of the tenancy may be made by registered or certified mail sent to the address at which rent is paid, in which case the provisions of Section 1013 of the Code of Civil Procedure shall apply.

Serving Out of State Drivers

A nonresident of the state cannot cause an accident and return home without prosecution. California may acquire jurisdiction over a nonresident motorist who has caused an auto accident within the state.

CCP 116.340(g) A nonresident owner or operator of a motor vehicle involved in

an accident within this state may be served pursuant to the provisions on constructive service in Sections 17450 to 17461, inclusive, of the Vehicle Code without regard to whether the defendant was a nonresident at the time of the accident or when the claim was filed. Service shall be made by serving both the Director of the California Department of Motor Vehicles and the defendant, and may be made by any of the methods authorized by this chapter or by registered mail as authorized by Section 17454 or 17455 of the Vehicle Code.

*You can find more detailed information including a list of instructions on serving a nonresident motorist by viewing fact sheet **#3 Auto Accident: Out of State Driver**. A copy of this fact sheet is included in your manual and can be found online at www.ocsmallclaims.com*

Post Office Boxes

Post office boxes are offered by the federal government only, and cannot be served. (39 U.S.C. 401, 403, 404)

Serving a Commercial Mail Receiving Agency

Commercial mail-receiving agencies (CMRAs) offer “private mailboxes,” and are not P.O. boxes. A commercial mail-receiving agency, also known as a mail drop, allows for the rental of a private mailbox. Unlike P.O. boxes, which are a service of the United States Postal Service (a federal agency); these private mailboxes are available through various commercial agencies (e.g. UPS, Mail Boxes, Etc.). Addresses at a CMRA are given the designation “PMB” (private mailbox).

When a customer rents a private mailbox at a CMRA, state law requires that the box renter sign an agreement which authorizes the CMRA owner or operator to act as the agent for service of process for the mail receiving service customer.

If you know that the person you are suing has a PMB with a commercial mail receiving agency, you have the option of serving the agency location with copies of your Plaintiff’s Claim.

(B & P C § 17538.5)

Below are the proper steps for serving a CMRA

1. You must verify the location of the PMB (private mailbox). Contact the U.S. Postal Services office and ask for the location of the box. This has the added benefit of allowing you to verify that this box does indeed belong to a CMRA, and not a federal post office box (which cannot act as agent for service of process).
2. Ask a friend, process server, sheriff, or anyone over 18 years of age and not a party to the case to serve the CMRA owner or operator with copies of your claim.

3. Though not required by law, it is always a good idea to mail a copy of the plaintiff's claim to the PMB itself.
4. The CMRA will send all documents by first-class mail to the last known home or personal address of the mail receiving service customer. Make sure to serve the CMRA at least fifteen (15) days prior to your hearing date. (B & P C § 17538.5(d) (1) (A), (B))
5. File a completed *Proof of Service* form with the court clerk five (5) days before your hearing date.

The Defendant no longer rents the private mailbox...

State law requires that CMRAs accept service of process for and on behalf of any of their mail receiving service customers for two (2) years after termination of any mail receiving service customer agreement. So you may be able to serve the owner or operator of the CMRA within two (2) years after end of the private mailbox rental agreement. (B & P C § 17538.5(d) (1))

Finding Debtor after Judgment...

Upon presentation of a certified copy of a judgment, the CMRA is obligated to disclose to the judgment creditor (winning party) the last known address of any of its mail receiving service customers against whom the judgment was obtained. (B & P C § 17538.5(d) (3))

Serving the Secretary of State

Corporations must register with the Secretary of State. They must also identify an agent for service of process. If you cannot find the corporation listed or the agent for service of process, you may have the Secretary of State served with the claim.

Corp. Code 2111. (a) If the agent designated for the service of process...cannot be found with due diligence at the address stated in the designation...or if no agent has been designated and if no one of the officers or agents of the corporation...can be found after diligent search and it is so shown by affidavit to the satisfaction of the court, then the court may make an order that service be made by personal delivery to the Secretary of State or to an assistant or deputy secretary of state of two copies of the process together with two copies of the order, except that if the corporation to be served has not filed the statement required to be filed by Section 2105 then only one copy of the process and order need be delivered but the order shall include and set forth an address to which the process shall be sent by the Secretary of State. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.

Not all counties allow this relief in small claims court. *The process of serving the Secretary of State is listed in detail on the actual Application and Order to Serve*

the California Secretary of State local form (L-1189). You can retrieve this form online at www.occourts.org.

Resources

California Secretary of State:

- 916-653-6814
- www.ss.ca.gov

Online Search Tools:

- www.courtinfo.ca.gov/selfhelp
- www.occourts.org
- www.leginfo.ca.gov
- www.dca.ca.gov

Manuals:

- Nolo Press, How to Collect When you Win a Lawsuit
- Rutter Group, Enforcing Debts and Judgments

Small Claims Advisory Programs:

- Orange County
 - 714-571-5277 or 1-800-963-7717
 - www.ocsmallclaims.com
- Riverside County
 - 760-863-8202
- San Bernardino County
 - 909-382-3650 or 1-800-634-9085
- San Diego County
 - 619-236-2471
- Los Angeles County
 - 213-974-9759
- Sacramento County
 - 916-875-7846

Fact Sheet #4: Auto Accident- Who to Sue?

Who Do I Sue?

- You generally DO NOT sue the insurance company of the driver or owner of the vehicle.
- You should name the driver as well as the registered owner of the vehicle as Defendants in your claim (if they are different). Under VC§17150, the owner of a motor vehicle is liable and responsible for death or injury of a person or property sustained by that vehicle.

Example: If the owner and driver is the same person, “John Doe, owner and driver.” If the owner and driver are not the same person: “John Doe, owner and Jane Doe, driver.”

What if I Don't Know the Other Party's Address?

- You should have the correct name and address of the driver and registered owner of the other vehicle (if they are different). Hopefully, you obtained this information at the time of the accident.
- You can obtain this information from the police report, or your insurance company may obtain this information through the DMV. (The DMV will not release residential addresses to litigants and process servers.)
- You may also contact a private investigator who may be able to obtain the information.
- If you know where the defendant works you may use their work address to file your claim.

How to File your Claim

- Complete the “*Plaintiff's Claim and Order to go to Small Claims Court/Information for the defendant.*” Form SC-100.
- You must file the claim in the correct venue (court). You may file in the court that serves the area where the automobile accident occurred.
- After filing, serve each Defendant with a copy of the Plaintiff's Claim (SC-100). You may contact the Sheriff, or process server in the area where the Defendant(s) live to serve the documents.
- You can use substituted service to serve the small claims case, by serving someone who is in charge or who can receive service of process and following up by mailing a second copy.

*Please refer to our “*Service: How do you Serve the Defendant?*” sheet under Fact Sheets.

Preparing Records

- Make sure you bring any and all records you may need to prove your case.
- If there was a police report, you should subpoena those records by filing the “*Small Claims Subpoena and Declaration*” Form L-0520

For more information or assistance you can contact:

Legal Aid Society of Orange County
2101 N. Tustin Ave.
Santa Ana, CA 92705
Phone (714) 571-5204
www.ocsmallclaims.com

California Code of Civil Procedure:
www.leginfo.ca.gov/calaw.html

Revised 4/09

Fact Sheet #22: Naming the Defendant

It is important to name the defendant(s) correctly on your Plaintiff's Claim (SC-100). In order to collect your money, the defendant must be named correctly.

If you're not sure which of several possible defendants is responsible for your claim, you may want to name each person you believe is liable. You have the burden to prove why each person or business is liable. The court will decide whether the people you named are proper defendants and are legally liable.

Here are some examples of ways to name a defendant:

- **An Individual-** Write the first name, middle initial (if known), and last name. Example: "John A. Smith." If you sue a husband and wife, name them separately.
- **A business owned by an individual or entity (D.B.A.)-** Write the names of both the owner and the business. Example: "John A. Smith, individually and doing business as Smith Carpeting." If you win your case you can enforce judgment against assets (e.g., a checking account balance) in the names of John A. Smith as well as Smith Carpeting.
- **A Business owned by partners-** Write the names of both the business partnership and the individual partners. Each defendant should be listed as such: "John A. Smith doing business as Suburban Dry Cleaning" and on a separate defendant line, list: "Mary B. Smith doing business as Suburban Dry Cleaning." If you win your case, you'll be entitled to collect from the assets of the partnership or an individual partner.
- **A corporation-** Write the exact name of the corporation, as you know it, on the claim form. You need not name an individual. Example: "Fourth Dimension Graphics, Inc., a corporation."
- **A vehicle accident defendant-** If you're suing to recover your losses in a motor vehicle accident, you should name both the registered owner or owners and the driver. Example: If the owner and the driver are the same person, "Joe Smith, owner and driver." If the owner and driver are not the same, "Lucy Smith, owner, and Betty Smith, driver."

Where to find the proper name

If you are suing a local business or a corporation, you can find the defendant's correct name by checking:

- The city's business licensing bureau
- The city/county tax assessor's office,
- The county clerk's fictitious business name index.

If the defendant lives outside your area, try www.smartpages.com or other online phone directories.

Agent for Service of Process

The Secretary of State's Corporate Status Division can give you the names and addresses of persons who may be served on behalf of corporations that are

doing business in California. In many counties, the agent for service of process should NOT be listed on your Plaintiff's Claim (SC-100). Visit www.ss.ca.gov to find the agent for service of process.

www.ss.ca.gov

For more information or assistance you can contact:

Legal Aid Society of Orange County

2101 N. Tustin Ave.

Santa Ana, CA 92705

Phone (714) 571-5204

www.ocsmallclaims.com

California Code of Civil Procedure: www.leginfo.ca.gov/calaw.html

Revised 04/09

Fact Sheet #26: How Do You Serve the Defendant (Proof of Service)?

Preparing to Serve the Defendant:

- Upon completion of filing your Plaintiff's Claim (SC-100) with the proper court, the court clerk will give you a hearing date.
- It is solely your responsibility to make sure that each defendant is properly notified of this hearing date.
- You must arrange for someone other than yourself to complete **service of process** on each defendant.

Service of process can be legally done in the following ways:

- **Certified mail by the court clerk-** The court clerk may serve the Plaintiff's Claim (SC-100) on the defendant by certified mail and restricted delivery. There is a \$10 fee for this service. The court clerk receives a return receipt indicating that the person identified by you for service signed for the certified mail. Within 10-15 days after the clerk mails the Plaintiff's Claim (SC-100), you should call the small claims clerk to determine that your claim has been successfully served. You should provide the clerk with the case number and hearing date when requesting this information.

NOTE: If the defendant does not sign for the mail, they are not considered served and you will have to continue trying to complete service of process on that defendant.

- **Personal service-** A process server, someone other than yourself who is 18 years or older and not a party to the lawsuit, may give a copy of the Plaintiff's Claim (SC-100) to the defendant. Most plaintiffs use a professional process server, or the sheriff where available, as a process server. You are entitled to reasonable reimbursement from the defendant for the cost of service if you win the case. If you decide not to use a professional process server or the sheriff and have a friend serve the papers, make sure that the papers are properly served on the defendant. It's not enough merely to drop the papers at the doorstep or serve a member of the household. Service of process is ordinarily accomplished by delivering a copy of the Plaintiff's Claim (SC-100) to the following persons:
 - In the case of an individual defendant- To the defendant in person, or to someone that the defendant has authorized to receive service.
 - In the case of a partnership- To (1) a general partner, (2) the general manager of the partnership, or (3) an individual or entity that the partnership has designated as its agent for service of process.

- In the case of a corporation- To (1) the president or other head of the corporation, (2) a vice president, (3) a secretary or assistant secretary, (4) a treasurer or assistant treasurer, (5) a general manager, (6) an individual or entity that the corporation has designated as its agent for service of process, or (7) any other person authorized to receive service of process.
- In the case of a minor- To the minor's parent or guardian or, if no such person can be found with reasonable diligence, to any person having the care or control of the minor, or with whom the minor resides, or by whom the minor is employed. If the minor is age 12 or older, a copy of the claim also must be delivered to the minor.
- **Substitute service-** A process server may leave a copy of the Plaintiff's Claim (SC-100) at the defendant's home or usual place of business. It must be left in the presence of a competent member of the household who is 18 years or older, or with the person in charge at the defendant's place of business during normal office hours. In addition, the process server must tell the person being served what the papers are for, and a copy of the papers must also be mailed to the defendant by first class mail at the place where the papers were left within ten days of the service. Substitute service is considered to be completed on the tenth day after mailing. Your process server must state the name of the defendant and the person who the papers were left on the proof of service form (SC-104). You must return this proof of service form to the clerk of the court at least **5 days** before the hearing.
- **Service on non-resident motorist-** A process server may serve a non-resident motorist involved in an in-state accident by first serving the California Department of Motor Vehicles, and then serving the defendant by any of the methods outlined above or by registered mail. This is a rather complex process, and you should consult with the court clerk or small claims advisor before serving a non-resident motorist outside California.

Serving the Defendant in a Timely Manner is Important:

No matter which type of service you use, service must be completed within explicit time limits before the hearing. As a courtesy, try to give the defendant more advance notice than is legally required.

1. **Personal service** must be completed at least:
 - **15** days before the hearing if the defendant lives or has his or her principal place of business in the same county where the hearing is held, or

- **20** days before the hearing if the defendant lives or has his/her principal place of business outside the county where the hearing is held.
- 2. **Substitute Service** must be completed by mailing the SC-100 claim (after a copy has been personally given to someone at the residence/business) at least:
 - **25** days before the hearing if the defendant lives or has his or her principal place of business in the same county where the hearing is held, or
 - **30** days before the hearing if the defendant lives or has his/her principal place of business outside the county where the hearing is held.

Filing the Proof of Service Form (SC 104):

- **Proof of Service (SC 104)** is a court paper filed by a process server as evidence that she served the witness or party to the lawsuit with the court papers.
- The proof of service must be filed 5 days prior to the court hearing.

What Happens if you Fail to Serve the Defendant in a Timely Manner?

- If you do not serve the defendant within these explicit time limits, the defendant may ask for a postponement and, in most cases, a postponement will be ordered.
- In counting the days, do not count the day in which service was completed, but do count the day of the hearing.

Normally, only service of process in the State of California is acceptable, but there are two exceptions to this rule.

Two Situations Where Out of State Service is Acceptable:

- A nonresident defendant who owns real property in California: The defendant has no agent for service of process and the claim relates to that property. (The nonresident defendant may send a representative or submit an affidavit to defend the claim.)
- A nonresident defendant who owned or operated a motor vehicle involved in an accident on a California highway: Service of process is made on both the defendant and the Department of Motor Vehicles.
- Since out-of-state corporations and partnerships that operate here usually designate a California agent for services of process, you may be able to meet the in-state service requirement by serving the corporation's agent for service of process. To obtain that information call (916) 563-7315 (recorded message).

For more information or assistance you can contact:

Legal Aid Society of Orange County
2101 N. Tustin Ave.
Santa Ana, CA 92705
Phone (714) 571-5277
www.ocsmallclaims.com

California Code of Civil Procedure
www.leginfo.ca.gov/calaw.html

Revised 4/09

Fact Sheet #3: Auto Accident: Out of State Driver

How to file a Small Claims case if you were involved in a car accident with a driver or owner who lives outside of California (CCP 116.340 (g)):

Who to Name

- Make sure you have the correct name and address of the **driver and the registered owner** of the other vehicle, if they are different (V.C. 17150). This information is available from the DMV or the police report.
- Complete the "Plaintiff's Claim and Order to go to Small Claims Court/Information for the Defendant" (Form SC-100).
- Name both the **driver and the registered owner** of the other vehicle as the defendants on the form.

Where to File

- You must file the claim in the correct venue (court). You may file:
 - o Where the defendant lives or does business
 - o Where your property was damaged/ accident occurred
 - o Where you, the plaintiff, were injured
- Be sure to set the hearing date for at least 70 days in the future to allow time to serve the Director of the DMV and the out-of-state defendant(s) (See DMV information below).

Serving

- After filing, copies of the claim are given to you for service. California law requires you to serve a copy of the Small Claims (SC-100) form on **each defendant** including the out-of-state defendant(s) (See "How to Serve Defendant Form" for additional information).
- Additionally, for the out-of-state defendant(s), you serve the Director of the DMV requesting a return receipt; along with a \$2.00 check made payable to the DMV for each defendant being served. Send it to:
 - Office of the Director
 - Department of Motor Vehicles
 - Attn: Legal Office, E-128
 - 2415 First Ave.
 - Sacramento, CA 95818

Filing the Proof of Service

- You must file both the proof of service to each defendant, including out-of-state defendants, **AND** the acknowledgment of receipt (your return receipt) from the DMV at the small claims court **at least five days prior** to your hearing date.

Note: If you obtain a judgment against an out-of-state individual who does not have assets in California, you cannot enforce your judgment in California. You

will need to register your judgment in the state where the Out-of-state individual has funds and collect your judgment through that state. This can be expensive and time consuming.

Revised 4/09

