

Instructions for Service by Publication

This is a method of last resort. If you can find the Defendant, you must use another method of service. If you do not know where the Defendant lives or works, and you cannot find that information out, this is your only choice of service method. You must prove to the Court that you have tried to locate the Defendant and cannot find him/her.

Using service by publication places special limitations on your divorce case, because the Court will not have “personal jurisdiction” over the Defendant. You will not be able to get certain kinds of relief, such as child support and alimony, as part of the divorce. However, if the Defendant later acknowledges service, gets served by the sheriff, or files an *Answer* to the divorce, then your case will no longer be limited by the restrictions that apply to publication cases.

To serve by publication, you will need to prepare and file the following three (3) forms:

- Affidavit of Diligent Search*
- Notice of Publication, and*
- Order of Publication, Return of Service, and Order Perfecting Service*

In the *Affidavit of Due Diligence*, you will explain to the Court the steps you took to try to find the Defendant. You must make reasonable effort to find the Defendant before you fill out this form, which is available through the Family Law Workshop Program and has its own set of instructions.

If you know you must use service by publication when you prepare your *Complaint for Divorce*, then you should prepare all three above listed forms at that time. However, if you have already filed your divorce case, and have tried to complete service by a different method; you can still request the Court’s permission to serve by publication.

After you file the forms and if the Court grants permission, the judge will then sign an *Order of Publication*. You will need to pay the cost of publication (\$80.00) at the Clerk’s Office. *Notice of Publication* will then be published in the county’s official legal newspaper, called *Henry Daily Herald*, four times (usually four weeks in a row). The Defendant will then have 60 days to file an *Answer* if he/she wants to contest the case.

To be on the safe side, you should also mail a set of all the papers, called the “service copy,” to the Defendant’s last known address. Be sure to put enough postage on it, and be sure to list a return address so that the post office can return it to you if they are unable to deliver it.

After the *Notice of Publication* has been published all four times, you should receive an *Affidavit of Publication* from *Henry Daily Herald* stating that publication is complete. You must bring this *Affidavit of Publication* with you to your hearing in order to prove that service by publication has been completed. Usually the judge will then sign the *Order Perfecting Service* (part of the three-part form listed above) at the hearing, showing that the Court has reviewed the service and finds that it was done properly.

If you later find out where the Defendant lives or works (before the case is over), you should arrange for the Sheriff’s Department to serve the Defendant or for the Defendant to acknowledge service.