

**ILLINOIS PROCEDURE AND FORMS ON SERVICE  
BY SPECIAL ORDER OF THE COURT**

**By. Angela Baker  
Dated March 1, 2011**

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**General**

Effective service usually requires personal service unless otherwise directed by law. Every defendant in an action filed against him or her is entitled to receive the best possible notice of the pending suit. Therefore it is only where personal service of summons cannot be had, that substituted or constructive service should be considered.

**Procedural Questions**

- I. Are you trying to serve an agent of a corporation?**
  - a. If so, consider 805 ILCS 5/5.25, which allows you to serve the secretary of state under certain situations such as a corporation's failure to maintain an agent.
  - b. If not got to II
- II. Can you leave a copy of the summons with the individual defendant or at Defendant's usual place of abode?**
  - a. If so, do so in accordance with 735 ILCS 5/2-203 below. If not, proceed to question II.
  - b. Relevant Statute: 735 ILCS 5/2-203.
    - i. Except as otherwise expressly provided, service of summons upon an individual defendant shall be made (1) by leaving a copy of the summons with the defendant personally, (2) by leaving a copy at the defendant's usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards, and informing that person of the contents of the summons, provided the officer or other person making

service shall also send a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the defendant at his or her usual place of abode, or (3) as provided in Section 1-2-9.2 of the Illinois Municipal Code<sup>1</sup> with respect to violation of an ordinance governing parking or standing of vehicles in cities with a population over 500,000. The certificate of the officer or affidavit of the person that he or she has sent the copy in pursuance of this Section is evidence that he or she has done so. No employee of a facility licensed under the Nursing Home Care Act or the MR/DD Community Care Act shall obstruct an officer or other person making service in compliance with this Section.(b) The officer, in his or her certificate or in a record filed and maintained in the Sheriff's office, or other person making service, in his or her affidavit or in a record filed and maintained in his or her employer's office, shall (1) identify as to sex, race, and approximate age the defendant or other person with whom the summons was left and (2) state the place where (whenever possible in terms of an exact street address) and the date and time of the day when the summons was left with the defendant or other person.

**III. Is service impracticable by leaving a copy of the summons with the defendant personally; and it is also impracticable to conduct service by (2) by leaving a copy at the defendant's usual place of abode, in conformance with statutory requirements?**

- a. If service upon an individual defendant is impractical under (1) and (2) above, the plaintiff may move, without notice, that the court enter an order directing a comparable method of service.
  - i. Relevant Statute: § 2-203.1: Service by special order of court. If service upon an individual defendant is impractical under items (1) and (2) of subsection (a) of Section 2-203, the plaintiff may move, without notice, that the court enters an order directing a comparable method of service. The motion shall be accompanied with an affidavit stating the nature and extent of the investigation made to determine the whereabouts of the defendant and the reasons why service is impractical under items (1) and

(2) of subsection (a) of Section 2-203, including a specific statement showing that a diligent inquiry as to the location of the individual defendant was made and reasonable efforts to make service have been unsuccessful. The court may order service to be made in any manner consistent with due process. 735 ILCS 5/2-203.1.

**IV. Did you attach an affidavit stating the nature and extent of your attempts at service to your motion?**

- a. The motion must have an affidavit attached. The affidavit should show due diligence in trying to accomplish personal service. State the nature and extent of the investigation made to determine the whereabouts of the defendant and the reasons why service is impractical under items (1) and (2) of 735 ILCS 5/2-203(a), including a specific statement showing that a diligent inquiry as to the location of the individual defendant was made and all reasonable efforts to make service have been unsuccessful.

**Forms**

IN THE CIRCUIT COURT OF THE [fill in number] JUDICIAL CIRCUIT  
[name of county] COUNTY

[party name]	)	
an Illinois corporation,	)	
	)	
Plaintiff,	)	
	)	Case No. [case number]
v.	)	
	)	
[party name]	)	
	)	
Defendants.	)	

**MOTION FOR SERVICE BY SPECIAL ORDER OF COURT**

NOW COMES the Plaintiff, [name], through its attorneys, [attorney or firm name], and herein moves the Court pursuant to Section 2-203.1 of the Illinois Code of Civil Procedure for

leave to serve the Defendant, [name], pursuant to special order of the Court. For grounds, Plaintiff states the following:

1. Plaintiff has issued summonses herein on November 30, 2010, December 14, 2010, December 29, 2010 and January 31, 2011 relative to service of process upon Defendant.

2. Pursuant to each of the aforesaid summonses, Plaintiff has attempted on multiple occasions to personally serve the Defendant herein.

3. All attempts to serve said Defendant have been unsuccessful.

4. When service of the 30-day Summons was attempted by [name process server] on [date], the stated reason for non-service was the [state reasons]. The returned summons is attached as **Exhibit A**.

5. A First Alias 30-Day Summons was issued and [name process server] attempted to serve the Defendant and was again advised that the Defendant [facts learned by process server]. The Affidavit of Service of [name process server] is attached as **Exhibit B**.

6. A Second Alias 30-Day Summons was issued. [name process server] made numerous attempts of service on the Defendant at [address] which is, upon information and belief, believed to be Defendant's [residence, place of employment, vacation home, other]. [any facts learned may be stated-i.e. Defendant was believed to be in Illinois]. The Return of Service of summons is attached as **Exhibit C**.

7. A Third Alias 30-Day Summons was issued and forwarded to the [process server] for service on the Defendant at [address]. Once again the [process server] was unable to secure service and was advised that the Defendant [reason-i.e., was on vacation]. The returned summons is attached as **Exhibit D**.

6. The Affidavit of [attorney] is attached hereto and incorporated herein as **Exhibit**

7. Under Section 2-203.1 of the Illinois Code of Civil Procedure, the Court may authorize an alternative means of service if service under Section 2-203 is impractical.

8. Under the circumstances set forth herein, Plaintiff moves for a finding that reasonable attempts at service have been unsuccessful, that service upon Defendant is impractical and that an alternative means of service be authorized.

9. Plaintiff proposes that service be authorized by posting a copy of the summons and complaint upon the Defendant, [name Defendant], door, to be followed by mailing a copy of the summons and complaint to Defendant, [name defendant], by regular and certified mail.

10. The foregoing manner of service is consistent with the requirements of due process.

11. A proposed Order is attached as **Exhibit F**.

WHEREFORE, Plaintiff prays for an order authorizing service of process upon Defendant in the manner proposed in paragraph 9 and Exhibit F. Alternatively, Plaintiff prays for an order authorizing service of process upon the Defendant by any other means of substituted service the Court deems just.

[Party name], Plaintiff

WESTERVELT, JOHNSON, NICOLL & KELLER, LLC

By: \_\_\_\_\_  
Angela M. Baker

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Our File No. [number]

IN THE CIRCUIT COURT OF THE [number of judicial district] JUDICIAL CIRCUIT  
[name of county] COUNTY

[Name of Party], )  
)  
Plaintiff, )  
) Case No. [case number]  
v. )  
)  
[party name], )  
)  
Defendants. )

**AFFIDAVIT OF [Name]**

STATE OF ILLINOIS )  
) ss.  
COUNTY OF [NAME] )

Affiant, [name of affiant], being first duly sworn, deposes and states upon her oath the following:

1. I am an associate with [name of firm], attorneys for the Plaintiff, who has been attempting service on Defendant, [name of defendant].

2. Upon information and belief, service was attempted by [process server]. This summons was returned unable to serve with the advisement that [state reasons for return given by process server].

3. A First Alias Summons was issued and [process server] was directed to serve [name of Defendant] at the same address as the [process server] had attempted service. Upon information and belief, the agent for [process server] was also advised that [name of defendant] was [state whereabouts]

4. A Second Alias Summons was issued and forwarded to the [process server]. Upon information and belief, the [process server] was advised [state whereabouts, information learned].

5. A Third Alias Summons was issued once again for the [state address] and has been forwarded to the [process server]. This summons has also been returned unserved.

Further affiant sayeth not.

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Angela Baker

Subscribed to and sworn before me  
this \_\_\_\_ day of [month], 2011

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Notary Public

### **Practice Pointers**

You have to do as much as you can to serve someone, then if it's not possible because you can't find him or her, your alternate means is normally by publication or some other avenue that complies with due process. You have to be extremely diligent before serving by alternative means.

### **Relevant Cases**

- People ex rel. Waller v. Harrison, 348 Ill. App. 3d 976, 810 N.E.2d 589 (Ill. App. Ct. 2004).
- Mugavero v. Kenzler, 317 Ill. App. 3d 162, 164, 739 N.E.2d 979, 980 (Ill. App. Ct. 2000).