



Service Modernization Brief

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Introduction

Service of process can be confusing and cumbersome, particularly for self-represented litigants, but service is critical for people who have been sued. Improper service, or service that does not give a party actual notice about the case, can have serious consequences. People can lose housing, face garnishment, or lose custody of their children. A 2020 Pew survey found that 22% of defendants who did not show up for hearings in Philadelphia Municipal Court did not know that there was a case filed against them.¹ This document has suggestions, best practices, and sample rules and forms for states that are interested in revising their service rules and related forms.

Service Practices Generally

Currently, all states allow process by personal service (hand delivery of court documents). However, the rules about who may personally serve process vary from state to state. Some states require service to be completed by a professional process server or someone specifically designated by the court. Other states allow any person who is eighteen or over and not a party to the case to serve.

Some states also allow for service by certified mail or some form of mail delivery with some type of signature requirement in all or some situations, or service by publication or alternative means if the person to be served cannot be located, even though service by publication as usually structured is unlikely to give actual notice.

Given that many Americans get information and news from social media sites,² and communicate regularly using email or social media, some states have developed rules allowing service by social media, email, or other electronic means as service of last resort when personal service or service by certified mail (if allowed) has been ineffective. These state rules and statutes are discussed in the next section of this brief.

When thinking about modifying service rules or statutes, consider aiming for the widest range of service methods possible (e.g. personal service by people who are not parties to the case, certified mail, other alternative service methods) to ensure that people receive notice of court proceedings and that service is not unnecessarily complicated.

A full survey of state service practices is available on the NCSC Access to Justice [website](#).

¹ <https://www.pewtrusts.org/en/research-and-analysis/reports/2021/02/how-philadelphia-municipal-courts-civil-division-works>; *see also*,

² <https://www.pewresearch.org/journalism/2021/09/20/news-consumption-across-social-media-in-2021/> (31% of U.S. adults say they get news regularly on Facebook, 22% of Americans say they regularly get news on YouTube, 13% of Americans regularly get news from Twitter, and 11% regularly get news from Instagram.)

Innovative Rules, Statutes and Practices

The following section highlights some innovative state service practices, including rules that allow for electronic service as alternative service when other service methods have not been effective, and accompanying forms.

Electronic Service of Process

Alaska	Alaska R. Civ. P. 4(e)(3) allows service by publication; service of the notice to the absent party's e-mail account; posting of the notice to the absent party's social networking account; physically posting a copy of the notice and complaint on a public bulletin board or on the front door of the absent party's place of residence; or any method the court determines to be reasonable and appropriate. Alaska also has forms available to request alternative service.
D.C.	D.C. Super. Ct. Rule 4 allows service by email if the party requesting alternative service can show "that the party to be served used this method for successful communication within the past 6 months." If a person serves by email, they must also mail a copy to the defendant's last known address. D.C. has forms available to request alternative service that list text and social media as service methods to be requested.
Kansas	K.S.A. 60-303(f) allows service by first class mail (not registered or certified), fax, or email in garnishment cases only.
Maine	M.R.S.C.P. 4 allows alternative service "electronically or by other means." Maine also has forms for parties to use when requesting service by alternative means.
Nevada	Although Nevada's rule about alternative service does not specifically list text or email, Nevada does have forms for family law cases that list text and email as alternative service options.

<p>Oregon</p>	<p>ORCP 7 lists electronic forms of alternative service that may include, but are not limited to e-mail, text message, facsimile transmission, or posting to a social media account. There are specific requirements in the rule for verifying that it is the person's account.</p> <p>Oregon has developed an alternative service packet for parties to use when requesting service by publication or alternative means.</p>
<p>Texas</p>	<p>Tex. R. Civ. P. 103-117 allows for alternative service “in any other manner, including electronically by social media, email, or other technology that will reasonably give notice.” LawHelp Texas has forms for requesting alternative service in family law cases.</p>
<p>Utah</p>	<p>Although Utah R. Civ. P. 4 does not specifically address email or other electronic service, their forms have options for email, text, and social media. They also have a self-help guide for proving that a party has made diligent efforts to locate the party to be served by alternative means.</p>

Other Innovative Practices

Some states, including [Texas](#)³, [Alaska](#)⁴, and [Delaware](#)⁵ have created legal notice websites as an alternative to traditional publication. Texas’s website is [here](#), Alaska’s is [here](#), and Delaware’s is [here](#). New York requires all licensed process servers to carry a GPS-enabled device to “establish and record the time, date, and location of service or attempted service.”⁶

³ Tex. R. Civ.P. 116.
⁴ Alaska R. Civ. P. 4(e).
⁵ [Del. Family Court R. 4; 10 Del. C. § 1065.](#)
⁶ [N.Y.C. Admin. Code Section §§ 20-410.](#)

[This](#) report from IAALS⁷ has a brief discussion of using technology to improve service of process and includes suggestions about using smartphones to record the time, date, and location of service, and photograph the person served.

Service of Process Best Practices and Recommendations

These recommendations are aimed at simplifying service of process rules and ensuring that parties are able to get actual notice as often as possible.

- **Update existing service methods:** Consider whether there are changes that could be made to existing methods of service (e.g. allowing non-licensed individuals to serve, service by certified mail in all cases).
- **Legal Notice Websites:** Consider a legal notice website similar to [Alaska](#), [Delaware](#), and [Texas](#) for process that is to be served by publication. This will create a greater likelihood of the person being served seeing the notice and can eliminate publication costs and logistical challenges when a person is believed not to live in the state where the lawsuit is filed.
- **Electronic Service as Alternative Service:** Consider allowing service by electronic means when appropriate. The following considerations are important for rule/statute changes allowing electronic service:
 - *Requesting electronic service:* Create clear requirements for how to request service via social media, text, or email, including outlining any steps a person must take before requesting service via social media (e.g. form checklists like [Utah](#) or [Maine](#)). It may also be possible to skip some of the steps on the checklist depending on the circumstances of the case so that these requirements do not become overly burdensome.
 - *Authenticity:* Create clear requirements for ensuring that the social media site, phone number (for text service), or email belongs to the person to be served (e.g. the D.C. rule⁸ mentioned above that requires certification that the email has been used to communicate with the person within the last six months), and some consideration of whether the person might have regular access to the account. Some other examples include looking at the age of the account, any photographs visible on the account, a person’s connections on the account (e.g. “friends” or associational pages/links), proof that the defendant has

⁷ IAALS, *Eighteen Ways Courts Should Use Technology to Better Serve their Customers* (2018), available at https://iaals.du.edu/sites/default/files/documents/publications/eighteen_ways_courts_should_use_technology.pdf

⁸ [D.C. Super. Ct. Rule 4](#)

communicated with the plaintiff using the account, and the date of the last posting on the account.⁹

- *Proof of Service*: Create clear requirements for determining that the person received service. For email service, this could require that the message is sent with a read-receipt requested or for social media messaging a screenshot of an icon indicating a message has been viewed. However, be aware that there are several ways around these types of “proof.” For example, a person can view an email on some platforms without sending the receipt or can turn off message-read indications on some social media platforms. It may be that if electronic service is service of last resort that the proof of service is not as critical, but it should be addressed.
- **Technology**: How might technology be used to assist with service? For example, should process servers create electronic records of service or attempted service as New York requires process servers to do? Also, consider privacy concerns that would be impacted by using electronic service records, and whether steps could be taken to mitigate these concerns. For example, if people are not served at home, what concerns are present about creating a record of their location at a particular time? How would this information be stored and for how long? (New York requires process servers to store the information for seven years.¹⁰)
- **Which case types?** Consider whether rule changes should apply to all civil case types or only certain case types. For example, Delaware’s legal notice website is only available for family law cases. There may be case types where service has been historically problematic and increased verification requirements for service are appropriate. Some states have created rules for debt collection cases to require additional notice to parties.¹¹ In New York, for example, the court must also send notice to the defendant in debt collection cases in addition to service by plaintiff, and the plaintiff must serve a copy of the complaint with information about the debt. Most states also require pre-filing notices in foreclosure and eviction cases before a plaintiff can file a court case.¹²
- **Data collection**: Collect data on alternative service (e.g. how often alternative service is used, in what case types, what type of service is requested/approved, number of defaults in cases where alternative service is used) to use as a guide for future rule changes regarding service. Consider

⁹ Amanda Sexton, *Service of Process via Social Media*, Law Practice Today (2017), available at

<https://www.lawpracticetoday.org/article/service-process-via-social-media/>

¹⁰ N.Y.C. Admin. Code Section §§ 20-410

¹¹ N.Y. SB 153, available at <https://www.nysenate.gov/legislation/bills/2021/S153>; *see also*, Pew Charitable Trusts, *Legislation Can Modernize How State Civil Courts Handle Debt Collection Lawsuits, May 2022*, available at <https://www.pewtrusts.org/en/research-and-analysis/articles/2022/05/16/legislation-can-modernize-how-state-civil-courts-handle-debt-collection-lawsuits>

¹² *See e.g.*, <https://www.lsc.gov/initiatives/effect-state-local-laws-evictions/lsc-eviction-laws-database>;
https://www.nclc.org/images/pdf/foreclosure_mortgage/state_laws/survey-foreclosure-card.pdf

collaborating with outside researchers and sharing this data with other government agencies to guide policymaking.