Service Divorce

Any document you file with the Court (and some others) will need to be "served" on the other party or parties to the matter. Please note that the process and forms are different for Divorce than other family law matters.

Personal / Special Service

Personal service (also known as Special service) is required at the beginning of a Court proceeding, including Divorce. This is to ensure that the Respondent (the other person involved in the matter) is aware of the Court proceedings and can participate.

Personal / Special service may be achieved **either by hand or by post**.

IMPORTANT NOTE: You cannot personally serve your spouse with your *Application for Divorce*.

Problems with Personal Service

It is possible to encounter problems with personal service, such as the recipient refusing or avoiding service or moving house without letting you know.

The following are some of the most common problems and possible solutions:

1. **Avoiding Service**. Sometimes Respondents try to avoid being served, perhaps thinking that the problem will go away or that by accepting service they will be agreeing to participate. This is unfortunate and untrue and only serves to prolong the process. In these cases, you can try to have them served at work instead of home (or visa versa) or at a different time of day. The documents may also be left with a person over the age of 18 at the home or workplace. Your server must keep details of all attempts to serve the Respondent (times, dates, location and any observations like the lights being on and the car being there, but no-one answering the front door). If repeated attempts are unsuccessful, you may have to apply to the Court for substituted service or to dispense with service (explained below).

2. **Refusing Service.** For similar reasons to avoiding service, Respondents may refuse service by not taking the documents your server is trying to hand them. In this instance, your server is required to place the documents down in front of the Respondent, state clearly what they are and that they are being served. They should also state the date and place for the Divorce hearing.

3. **Unable to be Located**. If you are unable to locate your spouse as they have moved away and/or changed jobs, then you must make all "reasonable efforts" to locate them. These efforts need to be documented. If you are still unable to locate the Respondent, you may apply to the Court for substituted service or to dispense with service (explained below).

In the event that you have made all reasonable efforts to locate and serve your spouse and all of these attempts have failed, you will have to apply to the Court for an order either for **Substituted Service** or **Dispensation of Service** (see Rules 6.14 and 6.15 *FCC Rules*).

In each case, this is done by filing an ***Application in a Case*** and a supporting ***Affidavit***. The *Application in a Case* can be completed using the form from the Court, or through the Commonwealth Courts Portal as an interactive online version. There is no Court fee for filing this particular Application.

The *Application in a Case* is usually listed to be heard on the same day as the Divorce hearing (although this is not always possible) and you should attend Court on this day to provide additional information if asked. Please note though that the Court may still adjourn your matter and make an order requiring you to undertake further attempts to serve or otherwise notify your spouse of the *Application for Divorce*, for example by advertising in a newspaper or website.

Substituted Service

Substituted Service applies when the usual methods of personal service have been repeatedly attempted but unsuccessful, and where the Court can be satisfied that a third person or another method can bring it to the Respondent's attention or it can be shown that the Respondent has already become aware of the proceedings. Usually, the other methods of service have been by advertising where your spouse is likely to see it, but more recently the Courts are recognising that social media accounts can be useful when other avenues fail.

Please see our sample Affidavit to see a typical example of the evidence required and our sample Application in a Case for the wording you might use to seek the Court's leave (permission) to either serve a third person or use another method to bring the proceedings to the attention of the Respondent including service by social media (your spouse's Facebook account for example).

Dispense with Service

In some very unusual cases where your spouse is unable to located, the Court has the power to dispense with service altogether - which means that service is not required at all.

In this circumstance, you will first have to make "reasonable attempts" to locate your spouse and these methods need to be documented. Keep a diary of when and how you have tried to find your spouse and any evidence of the results. Please see our sample Affidavit to see a typical example of the evidence required and our sample Application in a Case for the wording you might use to seek the Court's leave (permission) to dispense with service.

Abridgement of Time



Where there is a case of exceptional urgency for the Divorce to be heard, you can file an *Application in a Case* and a supporting *Affidavit* seeking order that the time for service and/or for the Divorce to made final be abridged.

Where you believe that your Divorce is of such urgency, we strongly urge you to seek legal advice from an experienced family lawyer before you file.