



# Service by Publication, or Warning Order, Fact Sheet

## Locating the Defendant

The law requires that you exercise "due diligence" in trying to locate the defendant. If the service by mail you sent is returned, or if you cannot locate the defendant, you may get constructive service on the defendant by publication. You will need to present to a court clerk the affidavit (which is a sworn statement) that you have tried to locate the defendant but were unable to do so. (See the "affidavit for service by warning order" fact sheet at [arlegalservices.org](http://arlegalservices.org).)

On the affidavit, you will need to list all the efforts you made in trying to find the defendant. You will need to file the affidavit with the court clerk. The clerk should then issue a "warning order."

This warning order will direct the defendant to enter an appearance within 30 days from the date of the first publication of the warning order. If the defendant does not file an answer within that time given by the court, they may be prevented from answering.

## Publishing

### **Publishing can be done by one of two ways:**

If the court granted you permission to waive your court filing fee (*in forma pauperis*), you may post the warning order in the courthouse for a period of 30 days. Ask the court clerk to direct you to the bulletin board used for postings.

If the court did not waive your filing fee, you will have to publish the warning order in a newspaper of general circulation weekly for two consecutive weeks for a total of two times. Once the publication period has run, the newspaper will mail you a "proof of publication," which must be filed with the court.

### **After Publishing**

Whether you post the warning order at the courthouse or publish it in the newspaper, you must send a copy of the "complaint and warning order" to the defendant at their last known address. The complaint and warning order

should be sent by "certified mail," "restricted delivery," and "return receipt requested."

When you receive the green card or returned letter, you must prepare and file another affidavit with the clerk that shows both of the following:

- you mailed and received back the green card or letter
- publication has been made by either of the two ways listed above

Once all of the above requirements have been completed, you may ask the court clerk to schedule a hearing date so you may proceed with the hearing on the merits.

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*The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. Always do what the court tells you to do.*

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*Updated March 2017*