

Serving Documents

When you are involved in a court case there are rules that tell you what documents you must give copies of to others involved in the case. This is called “serving documents” or “service”. The purpose of this fact sheet is to provide additional information on service of documents that is not included in the Small Claims Court guide. For basic information on service, please refer to page 9 of the guide.

The full Rules for serving small claims documents are set out at section 50 of the Small Claims Regulation, which can be found on the Department of Justice and Attorney General webpage under the Information link.

The documents that you must serve depend on the **other party in the case**.

If the Other Party in the case is a:	Documents you must serve:
Defendant	A copy of the Claim (Form 1) and a blank copy of the Response (Form 2).
Third Party	Copies of the Third Party Claim (Form 3), the Claim (Form 1), the Defendant’s Response (Form 2), and a blank Third Party Response (Form 4).
Witness	When summoning a witness you can serve a Summons to Witness (Form 12) which has been signed by the Clerk, and payment for attendance (see s. 29 of the Regulation or page 36 of the guide).

STEP 1: Decide How to Serve

Before the documents can be served, the party filing the claim must decide which method of service to use. There are a number of options, including:

- Personal Service
- Prepaid Registered Mail / Prepaid Courier

Note: Personal service is the preferred type of service because it is easier to obtain proper proof of service. If you do not have proof of service you may not be able to get a judgment.

As the guide explains (page 29), there are various ways to do personal service. You may hire someone such as a process server to serve the documents (check the yellow pages), have them delivered by the Sheriff’s Office for a fee, or ask a friend to serve the documents. Or, you can serve them yourself.



Personal Service

Here is how you or a friend would go about serving the documents:

1. Deliver the documents to the party being served.
2. Make sure the person really is the party being served. If the you or your friend do not personally know the party being served, you should ask for identification and write the particulars on the **Affidavit of Service (Form 20)**.
3. If the party being served is not at home, you may leave the documents with an adult who lives at the same address. Then, on the same or next day, you must mail another copy of the documents to the party being served.
4. The documents can be left with the person being served even if he or she refuses to take them.
5. The final step is for you or your friend to complete the **Affidavit of Service (Form 20)** and sign it in front of a **Commissioner of Oaths** in order to obtain proof of service. (See below "Getting Proof of Service"). **Note:** Take detailed notes of the name of the person served, the date, time, and manner of service, and any other related facts. This will help you when you are preparing the Affidavit of Service.

Serving documents on another party – who can you serve?

Type of Party to be served:	To properly serve the party you must do one of the following:
An individual (except an individual under a disability)	<ul style="list-style-type: none"> ▪ leave a copy of the document with the party; ▪ send a copy of the document to the party by Registered mail or Courier; ▪ leave a copy of the document with a person who appears to be an adult living at the party's home AND send another copy by ordinary mail that day or the next to the party at the address where you left the document.
A corporation	<ul style="list-style-type: none"> ▪ leave a copy of the document: <ul style="list-style-type: none"> ○ with a director or officer of the corporation; ○ with a person at a place of business of the corporation who appears to manage or control the business; ○ with the receptionist who works at the place of business; ○ at the registered office of the corporation; ▪ send a copy of the document by Registered Mail or Courier: <ul style="list-style-type: none"> ○ to the registered address of the corporation; ○ if the corporation operates in provinces other than New Brunswick, to the address of the attorney for service of the corporation
A partnership	<ul style="list-style-type: none"> ▪ leave a copy of the document : <ul style="list-style-type: none"> ○ with a partner; ○ with a person at a place of business of the partnership who appears to manage or control the business; ○ with the receptionist; ▪ send a copy of the document by Registered mail or Courier: <ul style="list-style-type: none"> ○ to a partner



Type of Party to be served:	To properly serve the party you must do one of the following:
A person who lives outside NB but has a business in NB	<ul style="list-style-type: none"> ▪ leave a copy of the document with any person who carries on business in New Brunswick for that person
A sole proprietorship (an unincorporated business with one owner)	<ul style="list-style-type: none"> ▪ leave a copy of the document: <ul style="list-style-type: none"> ○ with the sole proprietor (the business owner); ○ with any person at the sole proprietor's place of business who appears to manage or control the business ○ with the receptionist at the sole proprietor's place of business; ▪ Send a copy of the document by Registered Mail or Courier: <ul style="list-style-type: none"> ○ to the sole proprietor
A municipality	<ul style="list-style-type: none"> ▪ leave a copy of the document with: <ul style="list-style-type: none"> ○ the mayor; ○ the deputy-mayor; ○ the clerk; ○ the assistant clerk; ○ any lawyer who works for the municipality
A rural community	<ul style="list-style-type: none"> ▪ leave a copy of the document with: <ul style="list-style-type: none"> ○ the rural community mayor; ○ rural community deputy mayor; ○ rural community clerk or assistant clerk; ○ any lawyer who works for the rural community
An unincorporated association	<ul style="list-style-type: none"> ▪ leave a copy of the document with: <ul style="list-style-type: none"> ○ an officer of the association; ○ a receptionist who works at the association; ○ any person at the association's offices that appears to be in control or management
A board, tribunal or commission	<ul style="list-style-type: none"> ▪ leave a copy of the document: <ul style="list-style-type: none"> ○ with the secretary of the board, tribunal or commission; ○ an officer of the board, tribunal or commission; ○ a member of the board tribunal or commission
The provincial government	<ul style="list-style-type: none"> ○ See the PLEIS-NB Fact Sheet called Actions Against the Crown for guidance on how to serve according to the requirements of the <i>Proceedings Against The Crown Act</i>
The federal government	<ul style="list-style-type: none"> ○ Refer to the <i>Crown Liability and Proceedings Act (Canada)</i> or consult a lawyer.
The Attorney General of New Brunswick	<ul style="list-style-type: none"> ▪ leave a copy of the document with: <ul style="list-style-type: none"> ○ the Attorney General; ○ any lawyer employed in the part of the Department of Justice and the Attorney General that includes the Legal Services Branch, the Legislative Services Branch, and the Public Prosecutions Branch at Fredericton



Type of Party to be served:	To properly serve the party you must do one of the following:
The estate of a deceased person	<ul style="list-style-type: none"> ▪ leave a copy of the document with: <ul style="list-style-type: none"> ○ the executor of the estate; ○ other personal representative of the deceased person's estate; ○ the litigation administrator representing the deceased person's estate
A minor (a person under age 19)	<ul style="list-style-type: none"> ▪ leave a copy of the document with: <ul style="list-style-type: none"> ○ a parent; ○ guardian; ○ another adult who cares for or lives with the minor; ▪ if the minor is 16 years of age or older, leave a copy of the document with the minor too
A person whose affairs are managed by the Public Trustee under the <i>Mental Health Act</i>	<ul style="list-style-type: none"> ▪ leave a copy of the document with the Public Trustee
A person who has been declared mentally incompetent or incapable of managing his or her own affairs	<ul style="list-style-type: none"> ▪ leave a copy of the document with the mentally incompetent party's guardian (the party's "Committee of the Estate")
A person who is mentally incompetent or incapable of managing his or her own affairs, but has not been declared so	<ul style="list-style-type: none"> ▪ leave a copy of the document with the party AND the party's guardian, if there is one ▪ if the party has no guardian, leave a copy of the document with the person who cares for the party
An absentee (as defined in the <i>Presumption of Death Act</i>)	<ul style="list-style-type: none"> ▪ leave a copy of the document with the committee in charge of the absentee's estate



STEP 2: Get Proof of Service

If you or a friend has served the documents, you must obtain an Affidavit of Service (Form 20) from the courthouse or the PLEIS-NB website, complete it and sign it in front of a Commissioner of Oaths. Once it has been witnessed you have proof of service. For more information on proof of service, whether personal service or service by prepaid registered mail or prepaid courier, see pages 29 and 30 of the Small Claims Court guide.

If you decide to serve documents by **Prepaid Registered Mail or Prepaid Courier**, you must obtain the proper proof of service and attach it to the Affidavit of Service (Form 20) that you file with the court. See page 30 of the guide for information on what is proper proof for this method of service.

STEP 3: File the Affidavit of Service

The party serving the documents returns copies of the Affidavit of Service, along with copies of the document(s) they served, to the Clerk's Office. The Clerk will then put this form in your file as proof that the other parties in your case have received the documents.

What if I am unable to serve documents?

The General Regulation-Small Claims Act provides for "service in another manner" (s. 52). If serving documents through the usual methods is impossible, perhaps because the person you are trying to serve has moved and left no forwarding address or is trying to avoid service, you may apply to the court for service by another means. Before asking for service by another means, you should already have tried several times to serve the document by regular methods of service. Be prepared to give details of how you tried to serve the document, what happened, and why the method of service you are requesting will succeed. The court can make an order to allow any form of service it considers appropriate.

If you must apply to the court for service in another manner, it would be wise to consult a lawyer.

