



Inside this Guide

1 Information before You Start

2 Starting a Family Case

- Application (General)
- Simple Application – Divorce only
- Joint Application

3 Answers

4 Financial Statements

5 Filing Documents

6 Serving Documents

7 Required Steps

- First Court Date
- Conferences

8 Motions

9 Trial

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A Guide to Procedures in Family Court

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This guide does not provide legal advice. It is recommended that all parties seek legal advice where possible.

PART 6: SERVING DOCUMENTS

The *Family Law Rules* tell you which forms and documents must be used for each step of a family case. You must give a copy of the forms and documents to the other party named in the family case. Sometimes you may also be required to give the forms and documents to other people or agencies. For example, if the person receiving support receives social benefits like Ontario Works, the Ministry of Community and Social Services will need to be served with any material filed on an application for child support.

Giving your documents to the other parties and agencies is called **service**.

Under the rules, no person shall serve a document unless he or she is at least 18 years of age.

Special Service Rule

There are some documents in a family case, such as an application or a motion to change, that must be served by **special service**.

Where the special service rules apply, the person required to serve the document must arrange for the service of the document by another person. The party may not serve the document himself or herself.

Other persons who can serve the document include:

- A friend or family member; or
- A process server.

For information on process servers in your area look in the yellow pages or visit www.canada411.ca and search for “process server”.

Special service of a document requires the person serving the document to serve it by one of the following three methods:

- Give a copy of the document to the other person’s lawyer, provided that the lawyer is willing to write on a copy of the document served that he or she accepts the document for the other person;
- Mail a copy of the document with Form 6: Acknowledgement of Service that the person served with the document must complete and return to you; or

- Give a copy of the documents, in an envelope addressed to the person, to an adult who lives at the address of the person to be served and then mail a second copy to the address that day or the next.

If you fear for your safety or the safety of any friend or family member who could serve the documents, you may ask one of the court staff to arrange to have your documents served for you.

Regular Service Rule

The party or another person can serve most documents in the family court process by **regular service**. Regular service of a document means that you may serve a document by using one of the following methods:

- Mailing a copy of the document to the person or to the person's lawyer;
- Sending a copy of the document to the person or to the person's lawyer by courier;
- Faxing a copy of the document to the person or to the person's lawyer;
or
- Using any one of the three special service methods as set out above.

If you fear for your safety or the safety of any friend or family member who could serve the documents, you may ask one of the court staff to arrange to have your documents served for you.

For more information on the different methods for serving documents, see Rule 6: Service of Document of the *Family Law Rules*. You can find the *Family Law Rules* on the Ministry of the Attorney General's website at www.attorneygeneral.jus.gov.on.ca. Click on "Family Justice", then scroll down and click on "Family Law Rules".

When to Serve and File Documents

In addition to setting out the different methods to serve a document, the *Family Law Rules* will also help you determine:

- How far in advance you must serve the document on the other party;
and
- When the original documents must be filed with the court.

For example, if you have been served with an application in Canada, Rule 10: Answering a Case requires that you serve an answer on every other party and file it with the court where the case was started within 30 days after being served with the application.

Another example is the rule of service for motions. If you are bringing a motion, Rule 14 requires you to serve every other party by regular service at least four days in advance of the date set for the hearing of the motion.

Counting Days

Throughout the *Family Law Rules* there are timelines for when documents must be served on the other party and filed with the court. Rule 3 deals with the issue of time, including how to count the number of days. Generally speaking, counting starts on the day after the first thing happens. For example, if you serve a document on Monday that requires 7 days service, the first day you count is Tuesday and the 7th day is the following Monday.

For more details, see Rule 3 at <http://www.attorneygeneral.jus.gov.on.ca>. Click on “Family Justice” then scroll down and click on “Family Law Rules”.

You should always check the *Family Law Rules* and the family court form to make sure that you are serving and filing your documents properly and on time. Court staff cannot accept your documents if you have not complied with the rules of service.

Proof of Service

Cases cannot be decided fairly unless everyone who has the right to know:

- Is aware that a court case is going on;
- Is aware that a step in a case is going to happen and what information is being provided to the court as part of that step; and
- Has enough time to put their own side of the story before the court.

The court requires that you provide proof that the other party or parties were served with all the documents that you file with the court. Proof is in the form of an **affidavit of service**. In the affidavit, you must set out when, where and how the document(s) were served.

The affidavit of service form is available at the family court office or on-line at www.ontariocourtforms.on.ca. Read and follow the instructions on the form carefully.

The affidavit of service requires the person who served the documents to **swear or affirm** that the information in the affidavit is true. After completing the affidavit of service, the person must sign it in front of a **commissioner for taking affidavits**. There are commissioners for taking affidavits at the family court office.

Remember, it is a criminal offence for a person to swear or affirm a false or misleading affidavit. It is the responsibility of the person making the affidavit of service to make sure that the information in the affidavit is true.

After your document(s) are served and the affidavit of service is sworn or affirmed, you will need to file the affidavit with the court in the continuing record. You must also update the table of contents.

More detailed information on filing an affidavit of service is found in **A Guide to Family Procedures, Part 5: Filing Documents**.