

Process of Service

Index Code: 1303

Effective Date: 05/01/09 (Revised 4/15/17)

I. Purpose

Under the rules for courts in Maryland the Office of the Sheriff is responsible for the service of civil process. The effectiveness of the judicial system is dependent, in part, upon the effective and timely service of court documents by this office. The purpose of this directive is to ensure our constitutional duty is carried out, and establish guidelines for doing so.

II. Policy

It is the policy of the Office of the Sheriff to carry out our constitutionally mandated duty of providing process of service for the courts, and do so in the most effective and timely manner possible.

III. Courts and Civil Process Unit

The responsibility of the civil process function primarily lies with the Courts and Civil Process Unit, with the exception of Body Attachments, Protective Orders, Peace Orders and Emergency Petitions. Those orders are normally the responsibility of the Patrol Division with assistance from the Courts and Civil Process Unit as needed.

A. Assignment and Control

1. Deputies will serve civil papers ordered by the courts in compliance with this directive and the rules of the Maryland courts.

2. Deputies will not serve civil papers outside the State of Maryland.

3. A member of the Courts and Civil Process Unit is responsible for picking up the civil papers issued by the courts to this office, and will return served and non-served papers daily when the courts are open.

4. The deputy receiving papers will initially deliver them to the clerical staff, which will be responsible for logging them into the ICIS system. The following elements will be recorded. Additional elements may be entered as needed depending on the specific document:

- a. Date and time received
- b. Type of legal process, civil or criminal
- c. Nature of the document
- d. Source of the document
- e. Name of the plaintiff/complainant or name of the defendant/respondent
- f. Officer assigned for service
- g. Date of assignment
- h. Court docket number
- i. Date service due

5. Protective Orders, Peace Orders and Emergency Petitions will be picked up when the court calls by the closest available deputy, regardless of Division/Unit assignment, and delivered to the Clerical Unit for ICIS entry and assignment.

6. Civil Process papers will be assigned to a member of the Courts and

Civil Process Unit based on predetermined geographical areas of responsibility. At the end of their tour of duty, the deputies will return all papers to the clerical staff.

7. All attempts to serve papers will be logged either on the paper in the spaces provided, or on an attached sheet.

B. Process

An individual who is a defendant in a civil matter may be personally served, or the summons and complaint may be left at the defendant's residence with a person of suitable age and discretion also residing at the residence. When service cannot be made because there is no one at the premises, the deputy will leave an orange Civil Paper Notice card so that the person sought can call the office. Service may also be made to a person who is an agent authorized by appointment or law to receive service of process, such as an attorney.

If a person resists service by threats, violence or superior force, or by preventing a deputy from entering the premises so that the deputy cannot serve the process without force or personnel risk, the deputy will inform the unit supervisor. The deputy may be directed to provide an affidavit concerning the circumstances to the court, in which the court may authorize alternate means of service.

Service of a Summary Ejectment or Tenant Holding Over may be made by personal service or by posting in a conspicuous place on the property.

The rules for making valid service upon corporations, partnerships, associations,

and government entities are found in Rule 2-124 (Circuit Court) and Rule 3-124 (District Court) of Maryland Rules.

IV. Evictions

If a tenant fails to pay rent when it is due and payable, the landlord has the right to petition the District Court to repossess the premises. The first step is service of a Summary Ejectment, or Tenant Holding Over as described above. If the tenant does not pay the landlord, and after a hearing is held by the court, the court may determine that the rent is owed and render judgment in favor of the landlord for the amount due, directing the tenant to make restitution to the landlord and turn possession of the premises back to the landlord.

The tenant may still avoid the eviction by paying the rent due plus cost of the suit. However, if a landlord has used this process three times in any 12 month period to collect rent due, the landlord may petition the court for eviction regardless of payment.

If a tenant does not comply with the court's order within two days, the landlord may obtain a Warrant of Restitution (WOR) from the court. A WOR authorizes the Sheriff to put the landlord in possession of his or her property and to remove from the property, by force if necessary, all the furniture and other goods of the tenant.

A. Eviction Procedures

No notice by this Office is required prior to execution of a WOR by law; however, a WOR will not be executed on a Saturday or Sunday, Court Holiday, or when the ambient temperature is 32° F or below. In addition, the deputy will not execute an eviction if extenuating

circumstances exist that would reasonably place an individual in danger as a result of the eviction.

The deputy will make contact with the landlord (or his agents) prior to the execution of the warrant, and set a date and time for its execution. The landlord will be required to check the premises the night before the warrant is to be executed to determine if the defendant has already moved out of the premises and will inform the deputy. The landlord will insure that he or she has sufficient agents on hand at the time the warrant is executed.

If the eviction is to be carried out and the tenant is present, the deputy will explain the warrant to the tenant and ask for his or her cooperation in its execution. If the tenant wishes to pay the specified judgment and cancel the eviction, the tenant must be allowed to do so, unless the Judge has marked the box: “without right of redemption” at the end of the order. If that box is marked, the eviction must proceed unless the landlord asks that it be terminated.

All of the tenant’s property will be removed from the premises and placed on the nearest public right of way. If the tenant is not present and an offensive weapon or firearm is found, it will be confiscated. The deputy will also confiscate any prescription medications, controlled dangerous substances and alcoholic beverages that may be found, and transport those items to the office for disposition in accordance with current policy. After 24 hours, the landlord is responsible for removing any property left on the public right of way.

If the defendant is present and claims a firearm, the deputy will check the serial number through NCIC to see if it is reported stolen. If the firearm is not stolen, and the defendant presents satisfactory evidence of legal possession, the deputy will make sure the weapon is unloaded and safe before returning it to the defendant. If the defendant cannot present satisfactory evidence of legal possession, the deputy will confiscate the weapon and transport it to the office for disposition in accordance with current policy.

Animal Control will be called to take custody of any domestic pets that are not removed by their owner.

V. Writ of Executions

A writ of execution is issued by the court at the request of a plaintiff/creditor, when the court has rendered a money judgment in his or her favor. The writ is directed to the Sheriff and orders the Sheriff to “Levy” the property of the defendant/ debtor.

A levy may be made on real property (i.e., land and associated dwellings) or on personal property (i.e., vehicles, tools, and other movable possessions). The levy takes the property or its use from the defendant/debtor and minimally notifies him or her that the property in question may not be sold or otherwise disposed of, or taken out of the jurisdiction of the court, until the judgment has been paid.

The court may direct the Sheriff to put notice of the levy on the property, to exclude others from use of it, or to remove it from the premises. In all cases of levies the deputy will have a copy of the levy, along with a schedule, and the

last known address of the defendant after it has been posted.

In the case of real property, the deputy will post a copy of the writ in a prominent place on the property and give a copy to the defendant, if he or she is present at the time of service.

In the case of personal property, the deputy will obtain legal access to the property and affix a copy of the writ. The deputy will prepare a schedule listing the property and give a copy of the writ to the defendant if he or she is present at the time of service. Alternatively, the deputy may remove the property, post a copy of the writ and schedule in a prominent place in the immediate vicinity of the property, and affix to each item of property levied a label denoting that the property has been levied, or post a copy of the writ in a prominent place in the immediate vicinity of the property without affixing a label to each item of property if labeling each item is impractical.

If the writ instructs that the property be removed from the premises, and the deputy finds a person other than the debtor in possession of the property asserting a right to possession, the deputy will post the property and leave it where found.

A. Seizure

When the writ directs the Sheriff to place a plaintiff/creditor in possession of the personal property the deputy will proceed to the place where the property is located. The deputy will carefully ensure that the property to be seized matches the property described in the writ. Articles with serial numbers should be matched and/or recorded. The deputy

will provide a copy of the writ to the defendant, if he or she is present at the time of service. Regardless whether personal service is made, the deputy will have a copy of the writ and the schedule mailed to the defendant's last known address after the property is seized.

The deputy will then remove the property to a secure location and take steps to notify the plaintiff/creditor when he or she may take possession. The plaintiff/creditor is responsible for the payment of any costs incurred in moving and storing the property prior to taking possession of it.

VI. Show Cause Order Replevins

The court may issue a "show cause" order requiring a defendant to appear for a hearing to determine whether, even in advance of the trial, a defendant should be given immediate possession of described property. The show cause order sets a date for the hearing and for the trial on the merits. If after the hearing the court determines that the plaintiff should have custody of the property, it will issue a "writ of replevin." The writ of replevin directs the Sheriff to take possession of the described property from the defendant and deliver it to the plaintiff.

VII. Subpoenas

A subpoena calls a person to appear before the court in a civil matter. An individual who is subpoenaed may be personally served, or the subpoena may be left at the person's dwelling with another person of suitable age and discretion residing at the residence.

VIII. Body Attachments

A body attachment is the civil equivalent of an arrest warrant. Its purpose is to

compel the subject to obey the court's order. A deputy executing a body attachment will use all of the same precautions that would be followed while affecting an arrest. All policies and directives will be followed and the individual will be processed like an arrestee.

IX. Protective Orders

A protective order provides relief to a victim of abuse (the petitioner) by a person (the respondent) who is: the petitioner's current or former spouse; the person with whom the petitioner lives; a relative of the petitioner; or a person with who the petitioner has a child in common. Vulnerable adults and certain specified relatives of an eligible person or a respondent may also petition the court.

A protective order is valid for up to 12 months and may order a respondent: to refrain from abusing or threatening to abuse any person eligible for relief; to refrain from contacting, attempting to contact, or harassing any person eligible for relief; to refrain from entering the residence of any person eligible for relief; to vacate the home shared with the person eligible for relief; to stay away from the place of employment, school, or temporary residence of the person eligible for relief or home of other family members; to stay away from a child care provider of the person eligible for relief; to surrender any firearm; to participate in professionally supervised counseling or a domestic violence program. The order may also award custody of a child or children to a person eligible for relief, as well as temporary child support and temporary use of a vehicle jointly owned with the respondent.

There are two temporary protective orders: An interim protective order issued by a Court Commissioner, valid until the matter can be heard by a Judge; and a temporary ex parte order issued by a judge which is normally valid for up to seven days.

A protective order is not in effect until it is served on the respondent. Therefore, it is imperative that protective orders be served as quickly as possible. Upon receipt, the Duty Officer, or on-duty supervisor will log receipt of the order, recording the date and time of the receipt, the expiration date of the order, the type of order, the docket number, the respondent's name, and the petitioner's name. The Duty Officer or supervisor will then issue the respondent's copy of the protective order to the deputy working in the sector of the respondent's whereabouts. The Duty Officer or supervisor will then enter or have entered the protective order into the ex parte module of the ICIS Computer System.

If the respondent of the protective order resides in another county, the Duty Officer or on-duty supervisor will fax a copy of the order to the Sheriff's Office responsible for service in that county.

Upon completion of service the Duty Officer will record the date of service, and the name and identification number of the deputy who made service. Sheriff's Office personnel with access to the METERS/NCIC system will then enter the Order into METERS as soon as possible following service.

Violation of a protective order is a misdemeanor punishable by a fine not

exceeding \$1000 or imprisonment not exceeding 90 days, or both. A deputy may arrest with or without a warrant a person who the deputy has probable cause to believe is in violation of any protective order in effect at the time of the violation.

X. Peace Orders

A peace order establishes distance between two persons (the petitioner, who asks for the peace order, and the respondent) who are not related and who do not live together. Valid for up to six months, a peace order may order a respondent to: refrain from committing or threatening to commit certain specified acts against the petitioner; refrain from contacting, attempting to contact, or harassing the petitioner; refrain from entering the residence of the petitioner; stay away from the place of employment, school, or temporary residence of the petitioner; participate in professionally supervised counseling or, if the parties are amenable, mediation.

A temporary peace order accomplishes the same ends and is issued pending a hearing on the peace order itself. It is effective for up to 7 days, but may be extended.

A peace order is not effective until it is served. It is therefore imperative that peace orders be served as soon as possible. Upon receipt the Duty Officer, or on-duty supervisor, will record the date and time of receipt, the expiration date of the order, the type of order, the docket number, the respondent's name and the petitioner's name. Upon completion of service, the Duty Officer or supervisor will record the date of

service and the name and identification number of the deputy who made service.

Violation of a peace order is a misdemeanor punishable of a fine not exceeding \$1000 or imprisonment not exceeding 90 days or both. A deputy may arrest with or without a warrant a person who the deputy has probable cause to believe is in violation of a temporary peace order or peace order in effect at the time of the violation.

XI. Interim Protective and Peace Orders

A District Court Commissioner has the ability to issue an "interim" protective or peace order during hours when the courts are closed. Like other such orders, interim orders are not effective until they are served. Because they will, in most cases, be served outside regular business hours, the following procedures have been established to provide petitioners with a reasonable degree of protection during the interim petition process

Upon issuance of an interim peace/protective order, the Court Commissioner will notify the Sheriff's Office, by contacting the Duty Officer or the Department Emergency Services, to respond for service. The deputy will respond as quickly as possible and take possession of the order. The deputy will immediately provide a copy of the order to the Duty Officer or on-duty Supervisor who will record the date and time of the receipt, the expiration date of the order, the type of order, the docket number, the respondent's name, and the petitioner's name.

Regulations require that interim protective/peace orders be entered into METERS/NCIC system within 24 hours

of receipt. During normal business hours entries will be made by the clerical staff. After normal business hours, or when the clerical staff is not available, entries will be made by the Duty Officer or on-duty supervisor prior to the 24 hour time limit.

If the respondent of the interim protective/peace order resides in another county, the Duty Officer or on-duty supervisor will fax a copy of the order to the Sheriff's Office responsible for service in that county.

The deputy will immediately attempt service of the interim order. When service is completed the deputy will return the signed interim order to the Sheriff's Office and have the Duty Officer or on-duty supervisor update service information into the NCIC, allowing police to impose an on-scene

arrest of a respondent who violates an order. All served copies will then be forwarded to the Sheriff's Office clerical staff, where they will be returned to the Court.

XII. Any orders served on a premise occupant that the serving deputy determines could be important to deputies responding to future calls for service at that location must be noted on a "CAD Notes Request" form and submitted to their Unit Commander.

XIII. CALEA Reference(s): 74.2.1

XIV. Proponent Unit: Courts and Civil

Process Unit

XV. Cancellation of directive dated 5/16/16

Sheriff Gary Hofmann