

Service By Publication Requirements in Divorce

Most states have statutory requirements that must be met before service by publication can be authorized. Additionally, a court may only authorize service by publication upon a showing that the spouse seeking the divorce used due diligence to locate the missing or out-of-state spouse.

Due diligence, sometimes called reasonable diligence or common diligence, is defined as "diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation." Black's Law Dictionary (8th ed. 2004). Due diligence sufficient to justify service by publication has been described as " a thorough, systematic investigation and inquiry conducted in good faith..." *David B. v. Superior Court* 21 Cal.App.4th 1010, *1016.

Example: Statutory Prerequisites for Order of Publication

An order for the substitution of publication for personal service may not be made until:

1. A summons for the defendant has been issued and returned "Not to be found," and
2. The nonresidence of the defendant or his absence for at least six months is proved by affidavit to the satisfaction of the court.

DC ST § 13-338

Example: Due Diligence Sufficient for Order of Publication

A plaintiff in a divorce action must furnish the court with the following information before an order authorizing constructive notice is entered:

1. The time and place at which the parties last resided together as spouses
2. The last time the parties were in contact with each other
3. The name and address of the last employer of the defendant either during the time the parties resided together or at a later time if known to the plaintiff
4. The names and addresses of those relatives known to be close to the defendant
5. Any other information which could furnish a fruitful basis for further inquiry by one truly bent on learning the present whereabouts of the defendant.

Bearstop v. Bearstop 377 A.2d 405, *408 (D.C. 1977)



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