

How to Serve the Initial Divorce Papers

TexasLawHelp (<https://texaslawhelp.org/directory/legal-resource/texaslawhelp>) [1]

This article tells you how to serve your spouse with the initial divorce papers.



Does my spouse have to be served with the initial divorce papers?

Yes. If you file for divorce, your spouse **must** be served with the initial divorce papers.

Exception: Your spouse **does not** need to be served with the initial divorce papers if he or she will voluntarily fill out and sign:

- a Respondent's Original Answer form **or**
- a Waiver of Service Only form (this form must be signed in front of a notary).

If your spouse will voluntarily fill out and sign an answer or waiver of service, the rest of this article does not apply to you.

What papers do I have served?

Your spouse must be served with the “initial divorce papers” which include:

- the citation (get this form at the clerk’s office when you file your case); **and**
- a copy of your Original Petition for Divorce; **and**
- a copy of any other forms you filed with your Original Petition for Divorce.

Can I be the server?

No. You must arrange for a constable, sheriff, private process server, or the court clerk to serve the initial divorce papers.

How can my spouse be served?

You can have a constable, sheriff, private process server, or the court clerk serve your spouse with the initial divorce papers using one of these methods.

- **Personal Service. (This method is best.)**

The constable, sheriff, or private process server will:

- deliver the initial divorce papers to your spouse in person;
- complete a Return of Service form that says when and where your spouse was served; and
- file the completed Return of Service with the court or send it to you to file with the court. (The Return of Service is proof your spouse was served.)



Your spouse will NOT have to sign anything.

See **Texas Rules of Civil Procedure, Rule 106(a)(1).**

(<https://www.txcourts.gov/rules-forms/rules-standards/>) [2]

- **Service by Registered or Certified Mail, Return Receipt Requested.**

The clerk (or constable) will:

- mail the initial divorce papers to your spouse by registered or certified mail, return receipt requested; **and**
- **if the return receipt (or “green card”) is signed by your spouse and returned to the clerk**, the clerk (or constable) will complete a Return of Service form that says when and where your spouse was served, **and**
- file the completed Return of Service with the court or send it to you to file.

See **Texas Rules of Civil Procedure, Rule 106(a)(2).** (<https://www.txcourts.gov/rules-forms/rules-standards/>) [2]

Warning! You should only use service by registered or certified mail if you know that your spouse will sign for the certified letter. If someone else signs for the letter or your spouse does not sign his or her name exactly as it is written on your Original Petition for Divorce, you will have to pay another fee and have your spouse served a different way.

- **Substituted Service by Court Order.**

You can ask the judge for permission to serve your spouse another way if the constable, sheriff, or private process server:

- has tried to serve your spouse in person or by registered or certified mail without success; **and**
- can confirm that your spouse lives, works, or can be found at the location where service was attempted.

You must file a **Motion for Substituted Service** (<https://texaslawhelp.org/form/motion-substituted-service>) [3] and a Rule 106(b) Affidavit from the constable, sheriff or private process server. If the judge is convinced that your spouse can be found at the location where service was attempted, the judge can sign an **Order for Substituted Service** (<https://texaslawhelp.org/form/order-substituted-service>) [4] that authorizes the constable, sheriff, or private process server to:



- leave a copy of the initial divorce papers with anyone over 16 at the location specified in the affidavit **or**
- authorize service in any other manner that will be reasonably effective to give your spouse notice of the divorce.

See T (<https://www.txcourts.gov/media/1445439/trcp-all-updated-with-amendments-effective-may-1-2020.pdf>) [5]exas Rules of Civil Procedure, Rule 106(b). (<https://www.txcourts.gov/rules-forms/rules-standards/>) [2]

- **Service by Posting.**

This method of service is used **if you cannot find** your spouse (after looking really hard), and there **are no children** involved. Learn more here: **Service by Posting (when you can't find your spouse in a divorce without kids)** (<https://texaslawhelp.org/article/service-posting-when-you-cant-find-your-spouse-divorce-without-kids>) [6].

- **Service by Publication.**

This method of service is used **if you cannot find** your spouse (after looking really hard), and there **are children** involved. Learn more here: **Service by Publication (when you can't find the other parent)** (<https://texaslawhelp.org/article/service-publication-when-you-cant-find-other-parent>) [7].

Getting your spouse served can be complicated. If you have questions, talk to a lawyer.

How do I serve the rest of the court papers I file?

As a general rule, only the initial divorce papers (citation, petition, and any other papers you file with the petition) need to be served by a constable, sheriff,

private process server or the court clerk. You can serve the rest of the papers yourself.

Send a copy of any other papers you file in the case to your spouse. If your spouse has a lawyer, send a copy to the lawyer instead. You can use any of these delivery methods:

- Hand delivery
- Email
- Regular Mail or Certified Mail, Return Receipt Requested
- Commercial delivery service (for example FedEx)
- Fax
- Electronic service through the electronic filing manager. (**Note:** This method is required if you electronically file (E-File) the Petition and the email address of your spouse (or your spouse's lawyer) is on file with the electronic file manager.)



Exception: If you file an amended petition for divorce and your spouse has **not** filed an answer, you must have your spouse served with the amended petition. Follow these steps:

- ask the clerk to reissue the citation and attach a copy of your amended petition, and
- arrange for the respondent to be served by a constable, sheriff, or private process server (with the new citation and amended petition).

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Links

[1] <https://texaslawhelp.org/directory/legal-resource/texaslawhelp>

[2] <https://www.txcourts.gov/rules-forms/rules-standards/>

[3] <https://texaslawhelp.org/form/motion-substituted-service>

[4] <https://texaslawhelp.org/form/order-substituted-service>

[5] <https://www.txcourts.gov/media/1445439/trcp-all-updated-with-amendments-effective-may-1-2020.pdf>

[6] <https://texaslawhelp.org/article/service-posting-when-you-cant-find-your-spouse-divorce-without-kids>

[7] <https://texaslawhelp.org/article/service-publication-when-you-cant-find-other-parent>

