

Serving a Divorce/Separate Support Summons

Use these instructions if:

- ✓ You are filing a Complaint for Divorce (Not a Joint Petition for Divorce)
- ✓ Or a Complaint for Separate Support
- ✓ AND you know where the Defendant lives

Produced by the Suffolk Probate & Family Court Community Outreach Program—Richard Iannella, Register

READ THIS:

Information provided in this packet IS NOT LEGAL ADVICE, It is information. This information is not a substitute for a competent lawyer.

When you sign a legal document or file any papers in court, it can seriously affect you in the future. You should always try to get legal advice before filing documents.

Bar Association lawyer referral services are listed in our brochure "Legal Resources in and around Suffolk County." Also listed are free legal service providers. You may be eligible for help.

INSTRUCTIONS FOR COMPLETING the Divorce/Separate Support Summons

If you represent yourself in a Complaint for Divorce, YOU are responsible for serving the complaint on the other parties. The Court does not do it for you.

Fill in the summons as shown in the sample form on the next page. Fill in all the information requested, EXCEPT if the court has impounded your address, do not fill in your address.

TO SERVE THE SUMMONS:

YOU must arrange for *both* a copy of the complaint *and* a copy of the summons to be delivered to the defendant. This is called giving notice or 'service of process'.

The court allows different ways for you to give notice:

1. You may hire a deputy sheriff or constable to serve the papers. The deputy or constable must be authorized to serve in the county where they deliver the papers to the Defendant. Although there is a cost, it often is the most reliable way to serve papers. Deputies charge a fee to serve a summons and complaint in Suffolk County. If they don't locate the Defendant after trying several times, you can bring the notice of diligent search to the court and seek other ways to give notice.
2. If the other party—the 'Defendant'—is willing to accept service, they may sign the summons, "I hereby accept service of the within summons and complaint," then date and sign the paper *in front of a Notary Public*.
3. The papers can be delivered by a '*disinterested person*,' who is someone who does not have a financial or other particular interest in the case. Do not have papers served by anyone who might be covered by a custody, support or restraining order in the case--avoid service by close relatives, etc. If you need someone to serve as a disinterested person, most constables will do so for a fee. (An added advantage is a constable knows exactly what must be done and knows how to complete the return of service correctly.)

There is a free brochure available at the court to help you locate a deputy sheriff or constable.

If you have a constable or sheriff deliver the papers, phone and arrange to get the original summons and a copy of the complaint to them. After delivering the papers to the defendant, they will fill out the back of the original summons and either get it to you or send it directly to the court. *Make sure you discuss with the sheriff or constable whether they will give the original summons to you or to the court. If they give it to you, you will have to file it with the court, either in person or by mail.*

THE COMPLETED ORIGINAL SUMMONS, NOT A COPY, MUST BE FILED IN COURT. THE COURT NEEDS PROOF THAT YOU NOTIFIED THE OTHER PARTY ABOUT THE CASE.

Please read the summons carefully. Supplemental Probate Court Rule 411 imposes an automatic order on both parties to a divorce. Neither party may sell or transfer any property belonging to either the husband or the wife (or both) except as specifically stated in Rule 411. There may be serious legal consequences for failure to follow this order. IF you do not understand Rule 411, you should try to get legal advice.

Commonwealth of Massachusetts
The Trial Court

Probate and Family Court Department

SUFFOLK Division

Docket No. Write your docket number here

This is a sample form. Follow this sample to fill in the empty lines on your original summons.

Divorce/Separate Support Summons

(Write your name here) Jane Jones, Plaintiff

V.

(Write your spouse's name here) John Jones, Defendant

PLEASE PRINT IN
INK OR TYPE ALL
INFORMATION

To the above named Defendant:

You are hereby summoned and required to serve upon IF you have an attorney give this form to your attorney. If you are representing yourself, write in your name here

plaintiff's attorney whose address is Write in your address here

a copy of your answer to the complaint for Divorce Separate Support *(Circle the type of case you have)*
(type of action)

which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, the Court will proceed to the hearing and adjudication of this action. You are also required to file your answer to the complaint in the office of the Register of this Court at Boston either before service upon plaintiff's attorney or within a reasonable time thereafter.

Witness Elaine M. Moriarty Esquire, First Justice of said Court
at Boston this _____ day of _____, 20_____.

Register of Probate

AN AUTOMATIC RESTRAINING ORDER HAS BEEN ENTERED AGAINST THE ABOVE NAMED PARTIES WHO ARE PROHIBITED FROM:

- (1) Selling, transferring, encumbering, concealing, assigning, removing or in any way disposing of any property, real or personal, belonging to or acquired by, either party, except: (a) as required for reasonable expenses of living; (b) in the ordinary and usual course of business; (c) in the ordinary and usual course of investing; (d) for payment of reasonable attorney's fees and costs in connection with the action; (e) by written agreement of both parties; or (f) by Order of the Court.
- (2) Incurring any further debts that would burden the credit of the other party, including but not limited to further borrowing against any credit line secured by the marital residence or unreasonably using credit cards or cash advances against credit or bank cards;
- (3) Changing the beneficiary of any life insurance policy, pension or retirement plan, or pension or retirement investment account, except with the written consent of the other party or by Order of the Court.
- (4) Causing the other party or the minor child(ren) to be removed from coverage under an existing insurance policy, or permitting such coverage to lapse, including medical, dental, life, automobile, and disability insurance. The parties shall maintain all insurance coverage in full force and effect.

This order is in effect until the earliest of the following: (1)the order is modified or dissolved by the court; (2)the order is modified by a written agreement of the parties with court approval; (3)the entry of a judgment of divorce or separate support; (4)the action is dismissed; or (5)by further order of the court. FAILURE TO COMPLY WITH THIS ORDER MAY BE DEEMED A CONTEMPT OF COURT.

Divorce/Separate Support Summons

Notes

1. Refer to Supplemental Probate Court Rule 41 1.
2. After service of the complaint for divorce or separate support, if you wish to modify or dissolve the automatic restraining order, you must file a motion with the court and provide two (2) days notice to the other party or on such shorter notice as the court may prescribe, a party may appear without thereby submitting his person to the jurisdiction of the court, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

ACCEPTANCE OF SERVICE

I, _____, the above named Defendant hereby accept service of this summons and understand that judgment may be rendered against me in accordance with the complaint, a copy of which I have received this day.

Date _____

Signature of Defendant

If the Defendant agrees to accept service, They sign here IN FRONT OF A NOTARY PUBLIC

**NOTARI
ZATION**

_____ ss

Date _____

Then personally appeared the above named _____
who made oath that the foregoing acceptance was his free act and deed.

Signature of Notary Public _____

Print Name _____

My Commission Expires _____

Proof of Service

I hereby certify and return that on _____, 20__, I served a copy of the within summons, together with a copy of the complaint in this action upon the within named defendant by

(method of service)

Date _____

Signed under the penalties of perjury

Date of Service _____

If a sheriff or constable delivers the summons, they will complete this section. If a "disinterested person" delivers the summons, they must complete this section.

**Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department**

Supplemental Probate Court Rule 411. Automatic Restraining Order

Notice to Plaintiff

(a) The following automatic restraining order shall apply to both parties to a complaint for divorce or separate support. This automatic restraining order shall be effective with regard to the plaintiff upon the filing of the complaint by the plaintiff or the plaintiff's counsel and with regard to the defendant upon service of the summons and complaint or any other acceptance of service by the defendant.

After service of the complaint for divorce or separate support, on two (2) days' notice to the other party or on such shorter notice as the court may prescribe, a party may appear without thereby submitting his person to the jurisdiction of the court, and move to modify or dissolve the automatic restraining order and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

This order is in effect until the earliest of the following: (1)the order is modified or dissolved by the court; (2)the order is modified by a written agreement of the parties with court approval; (3)the entry of a judgment of divorce or separate support; (4)the action is dismissed; or (5)by further order of the court. FAILURE TO COMPLY WITH THIS ORDER MAY BE DEEMED A CONTEMPT OF COURT.

The following order PROHIBITS either party to a complaint for divorce or separate support from:

(1) Selling, transferring, encumbering, concealing, assigning, removing or in any way disposing of any property, real or personal, belonging to or acquired by, either party, except: (a) as required for reasonable expenses of living; (b) in the ordinary and usual course of business; (c) in the ordinary and usual course of investing; (d) for payment of reasonable attorney's fees and costs in connection with the action; (e) by written agreement of both parties; or (f) by Order of the Court.

(2) Incurring any further debts that would burden the credit of the other party, including but not limited to further borrowing against any credit line secured by the marital residence or unreasonably using credit cards or cash advances against credit or bank cards;

(3) Directly or indirectly changing the beneficiary of any life insurance policy, pension or retirement plan, or pension or retirement investment account, except with the written consent of the other party or by Order of the Court.

(4) Directly or indirectly causing the other party or the minor child(ren) to be removed from coverage under an existing insurance policy or permitting such coverage to lapse, including medical, dental, life, automobile, and disability insurance. The parties shall maintain all insurance coverage in full force and effect.

(b) The provisions contained in the new summons for divorce or separate support must be served on the defendant, except if personal service is not made as provided in Rule 4 and service is made by publication, said notice shall include a statement that an automatic restraining order has been issued pursuant to this rule. The provisions of this automatic restraining order need not be reprinted in said public notice.

Date Rule Effective: January 1, 2000

Sean M. Dunphy
Chief Justice