

CHAPTER 6 – SERVICE OF PROCESS AND DEFENDANT’S ANSWER

STATUTORY REFERENCES: RSA 173-B:3 (Commencement of Proceedings of
Hearing)
RSA 173-B:8 (Notification)
42 U.S.C Section 3796gg-5 (VAWA)

INTRODUCTION

If the plaintiff's petition is granted, it is the staff's responsibility to insure that the paperwork will be given to the appropriate law enforcement agency and that it will be served on the defendant. Staff shall make telephone contact with the law enforcement agency responsible for serving the petition to inform them that the order is being faxed to them. If the police department in the town where the incident occurred or where the defendant resides or is to be served is unavailable, the staff should contact the sheriff's department or New Hampshire State Police to arrange for service of process.

A. SERVICE OF PROCESS UPON THE DEFENDANT

PROTOCOL 6-1

Immediately upon issuance of the temporary order, the staff should transmit the order to the Administrative Office of the Courts for entry into a registry.

PROTOCOL 6-2

Pursuant to RSA 173-B:8, Temporary Orders shall be served by a law enforcement officer.

COMMENT

Court staff should review all copies of the petition and temporary orders to ensure that the plaintiff's address is not transmitted with the paperwork to be served upon the defendant.

PROTOCOL 6-3

It is the responsibility of the court staff to verify transmission to the appropriate law enforcement agency, and that the order together with the underlying petition has been received and has been assigned for service. Included in the package must be: the petition; the Temporary Order, which includes the Notice of Hearing; the Return of Service form; and a copy of the Defendant Information Sheet for Law Enforcement.

PROTOCOL 6-4

Staff shall seal the Defendant Information Sheet and place it in the case file until such time as the ROS is received. Upon the receipt from law enforcement of the completed Return of Service form, court staff shall fax it immediately to the AOC for entry into the registry. Upon entry, the Defendant Information Sheet shall be purged.

PROTOCOL 6-5

If a defendant is served at the courthouse, the court security officer, law enforcement officer or other staff member who has served the defendant shall complete a Return of Service form and follow the protocols below.

PROTOCOL 6-6

If a named defendant is out of state or is a non-resident, staff must determine which law enforcement agency is responsible for service of domestic violence restraining orders and transmit forthwith, by facsimile transmission, a copy of the plaintiff's petition, court's order and scheduling notice to said department, together with a request to have the documents served upon the defendant immediately. The agency should be further requested to make return of service in a similar manner; i.e., by facsimile transmission. Staff should always request that the orders be served without fees. However, if the serving jurisdiction insists upon payment of a fee before service, staff should contact the AOC for a check. If the agency will accept a credit card, the AOC will be able to make payment this way as well.

NOTE: Orders against military personnel should be transmitted to the duty officer for service by military police.

COMMENT

Amendments to 42 U.S.C. Section 3796gg-5 effective October 28, 2002 require any State, Indian tribal government, or unit of local government that receives funding under VAWA, to certify that it does not require that a victim of domestic violence bear any costs associated with the filing, issuance, registration, or service of a protective order. The Violence Against Women Office (VAWO) has designated the NH Department of Justice Grants Management Unit as the point of contact for problems with out of state service. Please call 603-271-7986.

This office will also be able to provide the corresponding information for other states' points of contact.

NOTE WELL: Orders should be served without required fees or original documents. However, staff shall ensure that any out-of-state requirements are followed to guarantee service of process, including payment of any requested fees. Staff shall notify the Administrative Judge any time fees or original documents are requested for out-of-state service.

PROTOCOL 6-7

Service of process upon a minor defendant should, whenever possible, be in the presence of a legal guardian or a parent of the minor.

PROTOCOL 6-8

If the court has not received the Return of Service by the date set forth for the final hearing, staff should contact the local police, by telephone, to confirm that service has not been made. If service has not been made, the temporary order should be extended. An extension of the temporary order should be prepared with a new court date and faxed to the AOC. Service should be again attempted, as described in this section. If, at the end of 12 months, service has not been completed, the plaintiff shall file a new petition. The plaintiff need not allege new or different facts if the same facts still, in the plaintiff's perspective, place the plaintiff in fear of abuse.

B. DEFENDANT'S ANSWER

PROTOCOL 6-9

When a defendant files an answer or any other document to a domestic violence petition, a copy of the answer is to be sent immediately by staff to the plaintiff.

PROTOCOL 6-10

If an attorney files an appearance, the attorney may have contact with the plaintiff pursuant to Protocol 5-23 and Protocol 5-24.

C. AMENDMENTS TO PLAINTIFF'S PETITION

PROTOCOL 6-11

The plaintiff shall be permitted to supplement or amend the petition if the defendant is provided time prior to the hearing to respond to the supplemented or amended petition. Any amendment shall be served upon the defendant.

COMMENT

This Court may only admit at hearing those facts relating to allegations which have been noticed to the defendant. See In the Matter of Amy Aldrich & Ryan Gauthier, 156 N.H. 33 (2007).