

Chapter 1

Starting the Case

§ 1.01 The Challenge of Locating Military Personnel

To start your case, you must notify the other party (the defendant or respondent). This usually means serving him or her with the summons and a complaint or petition. Occasionally it means serving a post-decree motion or application on the opposing party. When the party to be served is in the military, cannot be served by tendering a copy of the pleadings to his or her attorney, and is not in your local area, how do you locate him or her?

Finding military personnel after 9/11 can be challenging. The Department of Defense (DoD) has issued guidelines to the armed services on restricting access to the location of military personnel. Interpreted very narrowly, this means that the military locator services will not give out information on where a servicemember (SM) is stationed.

Strategies and “Detective Work”

But don't give up. There are some “work-arounds” for the diligent. First, you must have the most important piece of data there is for locating a SM—his or her Social Security Number (SSN). There is virtually no effective way to locate the SM without it. Obtain this from your client at the outset, if possible. You will find it on the parties' joint tax return, on the SM's pay statement (called a Leave and Earnings Statement, or LES), or on a copy of the SM's orders (past or present) as well as on most other military documents.

One approach is to contact the “base locator” at the last installation at which the SM was stationed. The phone number of this office is available through the installation's information operator. Ask for help in locating the SM, giving the full name, rank, and SSN of the SM when asked. You can sometimes obtain a SM's forwarding address if he or she has been reassigned, and you might be able to obtain a SM's military unit address if he or she is still at that base. The unit address is one location where the SM can be

served. It is, basically, his or her place of work. Granted, the SM might not spend the duty day (usually 7:30 a.m. to 4:30 p.m.) at that precise location; he or she might be at the barracks, at the motor pool, or out in the field. But the SM usually can be reached through his or her military unit address for service of process, which is discussed later.

Still another source of help is the military legal assistance attorney (LAA). An LAA is a judge advocate officer (or sometimes a federal civil service lawyer) assigned full-time or part-time to help SMs and their eligible family members with civil legal problems. LAAs are authorized to assist spouses of uniformed services personnel, their legitimate children, and their acknowledged or adjudicated illegitimate children. The assistance available may include obtaining a SM's unit address for legitimate legal purposes, such as service of civil legal process. Any authorized client can consult with any LAA, regardless of branch of service. In other words, an Army wife can receive help from a Navy legal assistance attorney, and an Air Force dependent child (even if 19 and in college) may consult with a Marine judge advocate. With the exception of the Navy, which has separate Naval Legal Services Offices (NLSOs) on naval bases, military bases have legal assistance offices located within the staff judge advocate's office. The smaller installations may have "legal assistance hours" on a part-time basis, either part of the day or a couple of days each week. Be sure to have a copy of your client's military ID card in case the LAA needs you to fax it to him or her to verify legal assistance eligibility.

Sometimes the Red Cross can help in an emergency. To find the closest branch office of the Red Cross, go to <https://www.redcross.org> and enter your zip code under "Your Local Red Cross." Army Emergency Relief,

PRACTICE TIP

Every SM has, or may obtain, access to online military Internet communications. Those in the Army, Army Reserve, or the Army National Guard can access AKO, or Army Knowledge Online. Those in other branches of service have equivalent military Internet service. Likewise, military family members can obtain an AKO account (or its other-service equivalent) through which they can get to the military locator. Perhaps a family member or friend with access can assist the client in locating the other party.

PRACTICE TIP

You can find a listing of worldwide armed forces legal assistance offices at <https://legalassistance.law.af.mil>, or by typing "locate military legal assistance offices worldwide" into any search engine.

Navy-Marine Corps Relief Society, Air Force Aid Society, and Army Community Services are the names of some similar military-affiliated entities.

Servicemembers often leave a copy of reassignment orders at their previous units when they depart. Contact the SM's commanding officer at his or her old unit and see if you can obtain a forwarding address.

When children are involved, another resource is the Federal Parent Locator Service. To start the process, contact your local Child Support Enforcement Agency.

Attorneys will find limited success with the use of military locator services. Responsibility for military personnel records falls within the jurisdiction of each branch of service, not the Secretary of Defense. Therefore, requests for military addresses should be sent to the respective service of the individual whose address is being sought. Military regulations and the Privacy Act of 1974 do not allow the release of home addresses or telephone numbers of service personnel without their consent. These regulations have been established to protect individual service men and women from commercial exploitation, from security threats, and from invasion of their right of privacy.

United States Army

The Army locator will not respond to requests from private parties or attorneys; this is in response to the post-9/11 terrorist threat. It will respond to state child support enforcement offices when the request is on official letterhead and the request is from a supervisor, not a caseworker. Requests must include the soldier's full name, SSN, and date of birth.

U.S. Army Human Resources Command
ATTN: AHRC-FOI
1600 Spearhead Division Avenue
Dept. 103
Fort Knox KY 40122

United States Navy

The Navy's locator service is at:

Navy World Wide Locator
BUPERS-07 Customer Service Center
5720 Integrity Drive
Millington, TN 38055-3120

United States Marine Corps

The Marine Corps locator service is at:

Headquarters, U.S. Marine Corps
Manpower Management, Records, and Performance Branch (MMRP)
2008 Elliott Road, Suite 205
Quantico, VA 22134-5030
1-800-268-3710

United States Air Force

The Air Force Worldwide Locator website is <https://www.afpc.af.mil/Support/Worldwide-Locator/>. It contains all the information needed on release of information on airmen and their location. The telephone number is 210-565-2660.

United States Coast Guard

There is no established locator service for the Coast Guard.

§ 1.02 Facilitating Child Support Casework

In addition to all of the preceding, Executive Order 12953¹ requires each federal agency to maintain an office that facilitates the service of process in child support matters. The specific section on this subject states:

Sec. 302. Service of Legal Process. Every Federal agency shall assist in the service of legal process in civil actions pursuant to orders of courts of States to establish paternity and establish or enforce a support obligation by making Federal employees and members of the Uniformed Services stationed outside the United States available for

1. <https://archive.org/details/ExecutiveOrder12953ActionsRequiredofallExecutiveAgenciestoFacilitatePaymentofChildSupport>.

the service of process. Each agency shall designate an official who shall be responsible for facilitating a Federal employee's or member's availability for service of process, regardless of the location of the employee's workplace or member's duty station. The OPM shall publish a list of these officials annually in the Federal Register, beginning no later than July 1, 1995.

The addresses to use for income and address verification are found in Appendix B to 5 C.F.R. Part 581. Agents designated to accept legal process for SM garnishment are listed in Appendix A to Part 581. These agents are designated to assist in the service of legal process in civil actions pursuant to orders of state courts to establish paternity and to establish or to enforce support obligations by making federal employees and SMs available for service of process, regardless of the location of the employee's workplace or of the SM's duty station. The agents are required to facilitate an employee's or SM's availability for service of process. Additionally, these officials are responsible for answering inquiries about their respective organizations' service of process rules. They are not responsible for actual service of process and will not accept requests to make such service. The list of military agents, addresses, and telephone numbers is found in Appendix B to 5 C.F.R. Part 581.

§ 1.03 Serving Military Personnel

Once you have located your defendant—let's call him Major Jake Green—you must serve him with the filed documents. How can you do this? Many attorneys would mail them to Major Green's commanding officer and request service on him. In reality, this is a great way to waste several days or weeks because a letter likely will come back, enclosing the initial correspondence and noting that military personnel are not allowed to serve civil process.²

Attorneys will find that the policies and regulations of the branches of service (e.g., Army, Coast Guard) specifically provide for limited assistance with service of process in civil cases when the area concerned is a military

2. There is no specific statutory prohibition on service of process, but the general concern stems from worries that serving civil litigants would contravene the Posse Comitatus Act, 18 U.S.C. § 1385, which prohibits using any part of the Army or Air Force to execute the laws. W. Mark C. Weidemaier, *Service of Process and the Military* at 6, n.30 (North Carolina School of Government, Dec. 2004). Department of Defense policy extends this to the Navy and Marine Corps as well. U.S. Dep't of Defense Dir. 5525.5, *DoD Cooperation with Civilian Law Enforcement Officials*, para. C, encl. 4 (Jan. 15, 1986).

installation or is otherwise subject to military control (such as on board a ship). Policies vary depending on where the documents are to be served, within the United States and its territories and possessions or overseas at a military base.

Service within the United States

When a party wants to serve state court process in an area under military control, the amount of military assistance depends on the type of federal jurisdiction applicable to that area. In areas of exclusive federal jurisdiction that are not subject to the right to serve state process, military authorities determine whether the member will voluntarily accept service of process. Before making a decision, military authorities may give the member an opportunity to obtain legal advice. If the member refuses to accept service, the military authorities notify the party requesting service that the nature of exclusive federal jurisdiction precludes service. Air Force policy deviates from this process by allowing process servers in areas of exclusive federal jurisdiction.

In areas of military control where the state has reserved the right to serve process, in areas of concurrent jurisdiction, or in areas where the United States has only a proprietary interest, the process is slightly different. If the individual declines to accept service of process, military authorities allow the requesting party to serve it pursuant to applicable state law. In such cases, military authorities may impose reasonable restrictions on the service to prevent interference with mission accomplishment and to preserve good order and discipline. Restrictions may include designating a location for the service of process. Military commanders can then order military members to the designated location; commanders do not have that authority over civilian employees.

Procedures differ slightly in cases where the forum court is not in the same state as the area under military control. In those cases, military policy does not require the member to accept process. If the member declines to accept process, the military authorities generally notify the process server of the declination and provide no further assistance.

Service outside the United States

The rules for overseas assistance are similar to those described under the voluntary acceptance procedures for areas of exclusive jurisdiction. They differ, however, because military authorities may act as physical conduits for service of process. This only occurs when a military member voluntarily

agrees to accept service of process. When a member declines to accept, the military authority notifies the requesting party of the declination. The military authority also advises the requesting party to follow procedures prescribed by the law of the foreign country concerned or applicable international agreements, such as the Hague Service Convention.³

This is not meant to paint a rosy picture of all efforts at service, however. The military services have their share of difficulties, especially in the area of child support:

Status as a member of the armed forces complicates the service of process issue and, in some cases, frustrates child support enforcement efforts. Within the United States, military policies on providing assistance vary depending on the type of federal jurisdiction, the location of an installation, and restrictions imposed by the Posse Comitatus Act [18 U.S.C. § 1385]. Furthermore, the individual military services have different policies on how much assistance they will give to parties seeking to serve process. Outside the United States, the internal laws of host nations or international treaties limit military assistance regarding service of process. These laws and policies increase costs and prolong the time necessary to resolve support obligations, thereby creating barriers to effective child support enforcement.⁴

Service by Mail

The first step in serving Major Jake Green is to attempt to do so (if he is stationed in the United States or in a foreign country that does not object to this method of service) by regular mail, accompanied by an “acceptance of service.” Mail it to him at his on-base unit address or at his residential address, whether on post or off. Perhaps Major Green will accept service instead of delaying. Such an acceptance might read:

I, the undersigned, hereby accept service on me of a copy of the summons and complaint in *Green v. Green*, Civil Docket #19-4452, Apex County, East Virginia. I waive any objection as to method of service of these papers.

3. Major Alan L. Cook, *The Armed Forces as a Model Employer in Child Support Enforcement: A Proposal to Improve Service of Process on Military Members*, 155 MIL. L. REV. 153, 170–72 (1998) (citations omitted).

4. *Id.* at 156.

Date: _____

Major Jake W. Green, SSN 111-22-5555
[Acknowledgment and Notary Certificate]

Service of civil process is available on most military installations. Note that military officials have no responsibility for serving process on or off the military installation, but upon reasonable request they often will give the SM the opportunity to accept service. If Major Green has refused to cooperate in the preceding method of service, you might write a letter explaining this to his unit commander along with the documents to be served, requesting that they be given to the major with an attached form to execute for acceptance of service. The commander likely will ask Major Green if he is willing to accept service of process. If so, Major Green usually will be given the chance to talk to a legal assistance attorney before deciding whether to accept service of the documents. If Major Green declines service of process, the appropriate commander or supervisor will advise the person requesting service of process that other means must be pursued.

You also can serve Major Green at his military address or his residence (on or off base) by registered or certified mail, return receipt requested, depending on your state statute for service of process. If you want to be sure that only Major Green is served and that no one else signs the card for the registered or certified mail, then specify “Restricted Delivery,” and *star* or *highlight* this on the card to remind postal service personnel of its importance. All too often, unfortunately, a letter that was supposed to be served only on the SM comes back to the office signed by someone else with no indication as to why that person was allowed to sign for the restricted delivery packet.

There are also cases when the return receipt for certified or registered mail has “gone missing.” If you have tried a second time to serve Major Green at his base (or on board a ship) and the return receipt still fails to appear, try writing to the unit commander with a demand that proper postal procedures be followed in delivering mail to Major Green (or accepting his refusal) through a return receipt, or else a formal complaint will be sent to the U.S. Postal Service, with a copy to the appropriate Inspector General’s office.

Service on Base

Just because Major Green is stationed at, and maybe living on, a military installation in the United States does not mean you cannot use a deputy

sheriff or a process server to accomplish service. In such cases, military authorities will make the SM available for service of process, assuming he or she is actually at the base (as opposed to being on a “field exercise” for a week or otherwise unavailable). Use the SM’s military unit address (e.g., MAJ Jake Green, SSN 111-22-5555, 3rd Combat Support Battalion, Ft. Swampy, East Virginia 29876) or his or her military residential address on post (e.g., MAJ Jake Green, SSN 111-22-5555, 124 Bugle Blvd., Bastogne Hills, Ft. Swampy, East Virginia 29876) to designate the address for service to the person who is serving the civil papers on the SM.

This procedure may not work, however, when the documents are issued by a court outside the county or state in which the installation is located. If the request for service of a state court’s civil process originates from a state other than where the military base is located, a commander will determine whether the SM is willing to accept service pursuant to the laws of the jurisdiction issuing the process. When this is not the case, then the commander will notify the person requesting service of this refusal and state that other alternatives must be used.

Thus if a SM does not want to accept service of papers from beyond the state in which the base is located, he or she will not be compelled to do so. Be aware that sometimes a base or branch of service will designate clerks and other personnel in the mail room to sign for certified mail. This may mislead judges and the party attempting service; it may appear that service has been accomplished “at his place of business or domicile” because someone age 18 or older signed for the document.

In reality, the court papers may finally be delivered to Major Jake Green some weeks or months later, whenever the clerk in the mail room gets around to it (or the substitute clerk is relieved by the regular clerk). And then legal assistance attorneys really have to work to get protection or relief for their clients, who by that time have judgments entered against them, have lost custody of children, or have garnishments already instituted. Read closely the document purporting to show proper service of process.

Army Policy

Army policy is to assist civil officials in the service of civil process. The rules are set out in AR (Army Regulation) 27-40, Chapter 2. The regulation for serving Army personnel on base is set forth in 32 C.F.R. § 516.

There is no single Army liaison office for accepting the service of court papers (civil process) on soldiers and family members. However, the provost marshal’s office (PMO) at Army installations, and the military police who serve there, generally serve as the point of contact for answering questions

about service of civil process on soldiers and family members residing, stationed, or employed at that Army installation. Procedures vary from installation to installation depending on applicable state or foreign laws. At many Army bases the local sheriff has a liaison with the base PMO, and a deputy takes all of the documents to be served to the PMO once or several times a week. Military police then call each SM's unit and have the SM appear at the PMO for service.

Navy Policy

The regulations for serving Navy and Marine Corps personnel at Navy and Marine Corps bases and on ships in U.S. waters are set out in 32 C.F.R. § 720.20.⁵ The regulation states in part:

Service of process upon personnel.

(a) *General.* Commanding officers afloat and ashore may permit service of process of Federal or State courts upon members, civilian employees, dependents, or contractors residing at or located on a naval installation, if located within their commands. Service will not be made within the command without the commanding officer's consent. The intent of this provision is to protect against interference with mission accomplishment and to preserve good order and discipline, while not unnecessarily impeding the court's work. Where practical, the commanding officer shall require that the process be served in his presence, or in the presence of a designated officer. In all cases, individuals will be advised to seek legal counsel, either from a legal assistance attorney or from personal counsel for service in personal matters, and from Government counsel for service in official matters. The commanding officer is not required to act as a process server. The action required depends in part on the status of the individual requested and which State issued the process.

(1) *In-State process.* When a process server from a State or Federal court from the jurisdiction where the naval station is located requests permission to serve process aboard an installation, the command ordinarily should not prevent service of process so long as delivery is made in accordance with reasonable command regulations and is consistent with good order and discipline. Withholding

5. The regulations are also at JAGINST 5800.7E, Chapter 6, which can be found by using a search engine on the Internet.

service may be justified only in the rare case when the individual sought is located in an area under exclusive Federal jurisdiction not subject to any reservation by the State of the right to serve process. Questions on the extent of jurisdiction should be referred to the staff judge advocate, command counsel, or local naval legal service office. If service is permitted, an appropriate location should be designated (for example, the command legal office) where the process server and the member or employee can meet privately in order that process may be served away from the workplace. A member may be directed to report to the designated location. A civilian may be invited to the designated location. If the civilian does not cooperate, the process server may be escorted to the location of the civilian in order that process may be served. A civilian may be required to leave a classified area in order that the process server may have access to the civilian. If unusual circumstances require that the command not permit service, see § 720.20(e).

(2) *Out-of-State process.* In those cases where the process is to be served by authority of a jurisdiction other than that where the command is located, the person named is not required to accept process. Accordingly, the process server from the out-of-State jurisdiction need not be brought face-to-face with the person named in the process. Rather, the process server should report to the designated command location while the person named is contacted, apprised of the situation, and advised that he may accept service, but also may refuse. In the event that the person named refuses service, the process server should be so notified. If service of process is attempted from out-of-State by mail and refused, the refusal should be noted and the documents returned to the sender. Questions should be referred to the staff judge advocate, command counsel, or the local naval legal service office.

The former Chief of Legal Assistance for Marine Corps Base, Camp Lejeune (currently Legal Assistance Director for Marine Corps Installations East) describes the procedure for service of process upon servicemembers (SMs) as follows:

1. Service of process within the Department of the Navy (DoN) is implemented through Navy Judge Advocate General Instruction 5800.7F, the Manual of the Judge Advocate General of the Navy, an order often referred to as the JAGMAN. The most recent edition can

be found on line at the Navy Directives site. Google “Navy Directives” then click on the “Other Directives” tab on the tool bar, then click on “JAG” in the drop-down box. Chapter 6 Part A addresses the delivery of DoN personnel to civil authorities and Part B addresses service of process on DoN personnel.

2. It would unduly disrupt military operations and good order for the local sheriff’s office to personally track down SMs aboard the installation for service of process. Such a procedure would also be quite time consuming and inefficient. Furthermore, since some installations are enclaves of exclusive federal jurisdiction, such actions by local authorities could even be unlawful. Accordingly, Camp Lejeune and the Onslow County Sheriff’s Office have executed a Memorandum of Understanding similar to that which I have seen at other military installations. The essence of the agreement is that the Sheriff will notify the Base Civil Process Officer that he desires to serve process on a service member. The Civil Process Officer, who reports to the Base Staff Judge Advocate or, as applicable, to the Officer in Charge, Legal Service Support Team, will contact the SMs command. That command is responsible for ensuring the SMs presence at the Civil Process Office at the designated date and time. On occasion, of course, the SM will not be present due to deployment or other assignment out of the area, and the Civil Process Officer will so notify the Sheriff.

PRACTICE TIP

Legal assistance attorneys might be unfamiliar with the law of your particular state. In your letter to the commander or the member, mention the adverse effects that can result from delays (e.g., increased legal fees that may be assessed against the SM, the possibility of a retroactive support order and the resulting arrearage when a support is finally issued, the judge’s displeasure, etc.). This might reduce the use of delaying tactics.

3. The Civil Process Officer also assists local law enforcement to serve arrest warrants on SMs in essentially the same manner. The SM suspect will be brought to the Civil Process Office for service of the arrest warrant. If the SM suspect is deemed a flight risk, the command will take steps to ensure that the SM does not flee. However,

the SM cannot be confined in the Base brig solely for the purpose of holding the suspect for another jurisdiction. After-hours arrest is effected by contacting the Command Duty Officer (CDO), the designated point of contact for all items of import occurring after normal working hours. A new CDO is assigned on a daily basis. The CDO should have a procedures manual for after-hours arrest that will also provide the names and phone numbers of military officers and personnel ordinarily involved with such arrest.

4. The local Magistrate visits the Civil Process Office on a regular schedule, multiple times a week, which is when most arrest warrants and civil process is served. This process allows the SM, in appropriate cases, to post bond without going to jail. If the offense is sufficiently serious and/or the SM does not post the requisite bond, the Sheriff will take the SM into custody pending initial appearance.

5. In some cases, a state other than North Carolina wants delivery (arrest) of the SM. The process begins with the requesting state contacting the county sheriff. The Sheriff will advise the Civil Process Officer of the need to have the SM present for arrest. The SM will be advised by a judge advocate of his right to waive or not to waive extradition and the consequences thereof. The judge advocate does not form an attorney/client relationship with the suspect, but merely provides procedural information. The JAGMAN prohibits the release of a service member to an out-of-state authority unless that authority executes a delivery agreement, the crux of which is to return the SM at the request of the armed forces at the completion of civilian proceedings. Usually, the DoN does not request the return of the SM, and instead effects an administrative discharge based on the misconduct for which the SM was arrested. The text of the delivery agreement can be found at Appendix B to Chapter 6 of the JAGMAN. Typically, the requesting state will execute the agreement and FAX it to the Civil Process Officer. Navy regulations provide that the Commanding General may release the SM to the out-of-state authority, but the CG is rarely, if ever, personally involved in the process; rather, the CG delegates the requisite authority to his designated agent, typically the Staff Judge Advocate or Civil Process Officer. There are very limited exceptions where the SM will not be delivered to the requesting state: the armed forces want to keep him for their own prosecution, or “extraordinary circumstances” exist, as determined by the SM’s commander. I have never seen any case in which delivery was refused based on extraordinary circumstances.

6. Our regulations appear to treat out of state civil process differently than in state process. The SM need not accept out of state civil process. As a practical matter, however, out of state authorities work through the local sheriff's office and the same procedures are followed as for in state process. That is, the Sheriff will deliver the process to the Civil Process Officer for delivery to the SM.

7. Civil process may also be served upon civilians who reside aboard the installation. The procedure for serving civilians is radically different than that for serving SMs. Civilians may be served at their on-base residence; the local authorities are escorted there by military police.

8. Secretary of the Navy Instruction 5820.8A addresses response to requests (including a subpoena) for a SM or DoN civilian to testify. This same Instruction applies when DoN records are sought in connection with litigation. The latest edition of this Instruction can also be found at the Navy Directives site. (Click on "Directives" on the tool bar, then SECNAV Instructions and "Notices" in the drop-down box, and then navigate to the numbered instruction.) Sometimes requests for DoN records arise in the context of a divorce, typically when one of the parties seeks adverse information about the other party, perhaps to be found in military medical records, or counseling records. The subpoena of DoN personnel to testify as an expert witness or in their official capacity (e.g., a Navy doctor testifying concerning injuries or treatment) does not come up often and when it does, it is typically a very serious case. The rules concerning the release of DoN personnel to provide expert or opinion testimony concerning their official duties are complicated and require the requestor to provide a great deal of information.⁶

PRACTICE TIP

If you anticipate requesting DoN personnel or records for the purpose of litigation, review SECNAV Instruction 5820.8A early and carefully. Do not assume that since you have a subpoena, the person or records will or must be produced without compliance with this instruction.

6. E-mail from Michael S. Archer, Legal Assistance Director for Marine Corps Installations East, to Mark E. Sullivan (Feb. 6, 2018) (on file with author) (Subject: Svc of process on base).

Air Force Policy

The rules of the Air Force for serving civil process will be found at Air Force Instruction 51-301 (2 October 2018) at section 2.10.2, which states:

2.10.2. Domestic Suits against Individuals in their Individual Capacity.

2.10.2.1. Service of process upon Air Force personnel in their individual capacity for an act or omission not occurring in connection with duties performed on the United States' behalf (e.g., landlord-tenant disputes, family law proceedings, non-duty related automobile accidents, etc.) is no different than service of process upon any other American citizen. Typically, the rules of civil procedure of the court that has jurisdiction over the litigation determines the type of service required for a particular legal action.

2.10.2.2. In some cases, service of process may be accomplished through registered mail. If that option is not available, then personal service of the documents upon the member may be required.

2.10.2.2.1. Within the United States, personal service of process upon Air Force personnel who live or work on a military installation is ordinarily accomplished by a civilian process server (typically a local law enforcement official or privately-hired contract server). This person gains access to Air Force personnel on the installation by contacting the installation Security Forces or base-level/servicing SJA's [staff judge advocate's] office, who then makes arrangements with the member to accept the legal documents.

2.10.2.2.2. While Air Force personnel may not serve legal process themselves, the members of the Security Forces and SJA's office routinely act as intermediaries by facilitating the voluntary acceptance of service of process or by escorting process servers onto the installation to effect service of process in accordance with local laws.

2.10.2.2.3. If facilitating voluntary acceptance of service of process, members of the Security Forces and SJA's office should make clear that they are acting only as a conduit and not a process server. If the subject is unwilling to voluntarily accept service, the process server will have to effect personal service.

Guidance from before the issuance of the above rules will be found in the Talking Paper at Appendix 1-A.⁷ Appendix 1-A also includes the 1985 legal

7. Attachment to e-mail from Lt. Col. Ferah Ozbek, Chief, Legal Assistance and Preventive Law Division, Office of the Judge Advocate General, U.S. Air Force, to Mark E. Sullivan (Mar. 2006) (on

opinion of the Judge Advocate General of the Air Force on enforcement of state court orders at overseas installations.

Coast Guard Policy

The Coast Guard handles service of civil process under Chapter 26 of the Coast Guard Military Justice Manual (MJM), which is found in Commandant Instruction M5810.1E.⁸ The language involved reads as follows:

26.D Policy. It is Coast Guard policy to cooperate with civil authorities to the maximum extent possible consistent with needs of the service and the individual rights of the service members concerned. It is contrary to Coast Guard policy to transfer a Coast Guard member from a command within one state to a command within another state solely, or primarily, for the purpose of making the individual amenable to prosecution by civil authorities.

26.E Within the territorial limits of the requesting state. When the delivery of any person in the Coast Guard is requested by civil authorities of a state for the alleged commission of an offense punishable under the laws of that jurisdiction and such person is within the requesting authority's territorial limits (including territorial waters), commanding officers are authorized to deliver such person when a proper warrant is presented and the approval of the Judge Advocate General, if necessary, has been obtained. See Section 2.K for situations where such approval is required.

Unlawful Service

When a process server attempts to serve a SM unlawfully, it may be necessary to provide an affidavit to the court to accompany a motion to dismiss or special appearance motion. The affidavit should be signed by the base commander or his/her representative. Counsel for the SM should effect prompt and close coordination with the judge advocate who is the base commander's legal advisor, frequently the "staff judge advocate" or "command judge advocate," or a subordinate JAG officer in that section or division. The client can usually facilitate such a cooperative venture. Here is an example of such an affidavit:

file with author) (Subject: Talking Paper on Service of Process on USAF Installations). Reprinted with permission. *See also* Service of Process, Enforcement of State Court Orders at Overseas Installations, 3 Op. JAG, A.F. Civ. L. 241 (1985).

8. *See* https://media.defense.gov/2018/Apr/06/2001900284/-1/-1/0/CIM_5810_1F.PDF (last visited Oct. 13, 2018).

**SERVING WITH THE UNITED
STATES ARMED FORCES AT
WATUSI AIR BASE, JAPAN**

AFFIDAVIT OF: CAPT PATRICK WILSON

I, Captain Patrick Wilson, Chief of Staff, Commander, Fleet Air Western Pacific, currently stationed aboard Watusi Air Base located in Watusi, Japan, being duly sworn, do declare the following:

1. Commander Fernando Ramirez has worked as the Operation Officer for Commander, Fleet Air Western Pacific from 2 August 2009 to present.
2. I am the Senior Command Representative located in Watusi, Japan.
3. The Navy's JAGMAN instruction 5800.7E states that service will not be made within the command without the Commanding Officer's consent. The Commanding Officer shall require that the process be served in his presence, or in the presence of a designated officer.
4. At no time has anyone contacted me or any other authorized representative of the command to serve process on Commander Fernando Ramirez.

IN WITNESS WHEREOF, I have hereunto set my hand on this day,
29 October 2019.

PATRICK WILSON

**ACKNOWLEDGEMENT BY A PERSON AUTHORIZED TO ACT
AS A NOTARY PURSUANT TO TITLE 10 U.S.C. 1044a**

With the United States Armed Forces

At Watusi Air Base, Japan, the forgoing instrument was subscribed and sworn to or affirmed before me by Patrick Wilson this 29th day of October 2019. He was identified by an Armed Forces ID Card. I do further certify that I am a person in the service of the U.S. Armed Forces authorized the general powers of a notary public under Title 10 U.S.C. 1044a and JAGMAN Chapter IX.

[notary signature and seal]

Substituted Service

One other possibility for serving a person in the military is known as “substituted service.” Most civil procedure rules allow for the service of civil process by leaving a copy of the summons and complaint at the defendant’s dwelling or usual place of abode with a person of suitable age and discretion then residing there.⁹ Does this mean that the deputy sheriff can effectively serve Major Jake Green at his civilian residence, even though he might be presently residing on a military base in the United States or abroad?

PRACTICE TIP

The best publication describing service of civil process on military personnel, with especially detailed information on service on a military base, is the North Carolina School of Government’s *Service of Process and the Military*, authored by W. Mark C. Weidemaier and published in December 2004. You can find it at Appendix 1-B and at <https://www.nclamp.gov/for-lawyers/additional-resources/>.

The answer to this depends, at least in part, on whether the statutes and case law of the state involved construe “dwelling house or usual place of abode” as Major Green’s *domicile*. Although some courts do so interpret this phrase, others engage in a practical scrutiny as to where the defendant is actually living—where he or she is usually to be found.¹⁰ If you are attempting this method of service, first check your state cases to determine the rules in this situation. Second, be sure you can justify substituted service as the best method of service for actually providing notice to the SM. Third, be sure that you have exhausted all other means of service before using this alternative. You do not want the judge to ask, “Why didn’t you use certified mail?” unless you can respond, “I did, your honor, but it was returned *REFUSED*.” The best rule, consistent with constitutional requirements of notice and due process, is that substituted service likely will be valid only when made on a suitable person at the residence of the SM from which he or she is only temporarily absent and under circumstances that make it likely that the SM will receive actual notice.¹¹

9. See, e.g., N.C. GEN. STAT. § 1A-1, rule 4(j)(1)a.

10. See, e.g., *Whetsell v. Gosnell*, 54 Del. 519, 181 A.2d 91 (1962).

11. For a detailed analysis of the problems with substituted service, see Weidemaier, *supra* note 2, at 3–6.

Other Methods of Service

For most of the last two decades, the most advanced form of service of civil process was the use of e-mail.¹² Today the cutting edge of process service is the use of social media. To a large extent e-mail and social media as means of communication have replaced ordinary letters and envelopes transmitted through the postal service. Few, if any, state legislatures have enacted specific rules to allow the use of electronic service without court approval, but nowadays more and more courts have come to recognize the availability of electronic service as a means of notifying a defendant of the pendency of a lawsuit involving claims against him or her, and informing the defendant of the opportunity to respond and defend. The courts are more often permitting such service to initiate the lawsuit.

Several forms of social media have gained ascendancy, and many citizens have found a central place in their everyday lives for Facebook, Twitter, Instagram, LinkedIn, and other social media platforms. The New York Supreme Court in *Baidoo v. Blood-Dzraku*¹³ stated that the next frontier in the developing law of the service of process by electronic means will be to use social media for communications involving the deliverance of a summons and the pleadings.

In the *Baidoo* case, the issue before the court was a motion by the plaintiff-wife to allow service of the divorce summons on the defendant-husband solely by sending it through Facebook by private message to his account. After reviewing the standard and alternate methods of delivery of the summons to a defendant, the court noted the importance that states place on ensuring that a person who is being sued in a divorce case, which is a matter that can have immense financial and familial consequences, being made aware of the lawsuit and being given the opportunity to appear, respond, and defend.

The court noted that the problem with personal service is that one must be able to locate the defendant to effectuate it. Even if the whereabouts of the defendant are known, it is sometimes logistically difficult, impractical, or even impossible to serve a defendant through a process server.

12. See, e.g., *Rio Props. v. Rio Int'l Interlink*, 284 F.3d 1007 (9th Cir. 2002). The appellate court stated that “[T]rial courts have authorized a wide variety of alternative methods of service including publication, ordinary mail, mail to the defendant’s last known address, delivery to the defendant’s attorney, telex, and most recently, email.” *Id.* at 1016 (citing cases). The court held that court-ordered service of process by e-mail was constitutionally acceptable; it was reasonably calculated, under the circumstances, to apprise the defendant of the pendency of the action and afford it an opportunity to respond.

13. *Baidoo v. Blood-Dzraku*, 48 Misc. 3d 309, 5 N.Y.S. 3d 709 (Supreme Ct. of N.Y., N.Y. County, 2014); see also *K.A. v. J.L.*, 450 N.J. Super. 247, 161 A.3d 154 (Chancery Div. 2016) (upholding service of process through Facebook). Both cases set out in detail the prerequisites for use of social media as a means of service or process.

Most, if not all, states have rules that allow plaintiffs to request permission to use one of the alternative methods allowed under the rules of civil procedure. Note that the state rules do not require *in-hand delivery* of the summons and complaint or petition in every case; provisions exist for *substituted service* (delivery of documents to a person of “suitable age and discretion” at the defendant’s actual place of business or residence. Other methods include posting the legal papers on the door of a defendant’s residence or place of business, and service by publication in certain cases upon a showing that service cannot be made by another method with due diligence.

After examining the possible methods of service that a plaintiff may use, the likelihood that a particular method will provide notice to the defendant, and the actual attempts made by the plaintiff, the court concluded that service by Facebook was appropriate. The court found that the plaintiff had used due diligence in attempting to locate the defendant and that all of these attempts had failed or were impractical or unavailable.

The parallels to military divorce service of process are obvious. If “Staff Sergeant Roberta Roe” is not in garrison at Ft. Bragg, she may be deployed. It may be possible to get the general area of the deployment, since news reports frequently list the deployment locations of entire units (e.g., “The 18th Aviation Brigade will be deployed to Afghanistan for one year, beginning ____”). It is unlikely, however, that the news account will specify the place in Afghanistan where SSG Roe lives, eats, and places her pillow each night. Even if you know where she is located (e.g., at LSA (Logistical Supply Area) Anaconda in Afghanistan), it will be impossible to serve her through a process server. If you use mail, she may decline to accept the certified or registered mail.

What about an application or motion to serve through a social media platform? The same concerns that faced the court in the *Baidoo* case are present when a defendant is deployed or is located in some restricted area where service by mail or process server will just not work. The creativity of counsel in requesting unique forms of court-approved service should extend to the use of social media.

§ 1.04 Service of Process Abroad

Serving military personnel and spouses overseas is not a quick and easy process. Depending on the country involved, the process could take several weeks or even months. Prepare your client for the potential waiting period and be ready to educate the court on why it is taking so long to get the papers delivered to the defendant.

The place to start your research on foreign-nation service is the U.S. State Department's website on service of process abroad.¹⁴ The country-specific information located there allows you to check the rules for each country. The State Department website also has information on preparation of letters rogatory, obtaining evidence abroad, and authentication of documents. An information paper on "International Service of Process under the Hague Convention" is at Appendix 1-C; it can also be found by going to <https://www.nclamp.gov/media/490357/aoj-international-service.pdf>.¹⁵

Counsel should be cautious about choosing a method of service abroad. Some methods that seem quite ordinary may be in violation of the law of the country where service is to be accomplished. One author summarizes the issue thus:

One factor that frequently arises in selecting a mechanism for extraterritorial service is the effect of noncompliance with foreign law. Department of Justice guidance provides that:

Absent a treaty, service abroad must be made (1) in accordance with domestic law regulating extraterritorial service, and (2) in a manner which will comport with the laws of the foreign country in which the document is to be served. A note of caution is in order here: service of judicial documents is regarded in civil law countries as the performance of a *judicial function*, and the laws of some countries (e.g., Austria, Japan, Switzerland, Yugoslavia) make it an offense for foreign officials to perform, without express permission from the local government, judicial functions within their territories. In countries where service is deemed a judicial function, American documents should be served only by means of a letter of request or by mail (but note, Switzerland objects even to the latter mode of service).¹⁶

Despite the foregoing guidance, the majority view amongst American courts is that federal and state procedures are the "sole requirements that extraterritorial U.S. service must satisfy." Therefore, service that

14. Located at <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internal-judicial-asst.html> (last visited Feb. 4, 2018). Another link with a substantial amount of information on how to serve civil process abroad is <https://www.hcch.net>.

15. See also Edward Burton, *Service of Process Abroad*, https://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/oct99bur.html.

16. Citing U.S. Dep't of Justice Instructions for Serving Foreign Judicial Documents in the U.S. and Processing Requests for Serving American Judicial Documents Abroad, reprinted in 16 INT'L LEGAL MAT. 1331, 1337 (1977).

is defective under foreign law usually will not invalidate service for purposes of United States law, at least under the majority view.

While the judicial action may continue pursuant to the majority view, United States litigants should be aware of the risks they take when violating foreign restrictions on service of process. One possible consequence of service abroad in violation of foreign law is the imposition of criminal or civil sanctions against the process server. Many civil law nations view the service of process and the taking of evidence as public acts that require the participation or supervision of the local judiciary. Some of these civil law nations have imposed sanctions against United States process-servers for attempting to personally deliver United States complaints and summons to foreign defendants. Additionally, service in violation of another country's laws can provoke vigorous foreign government protests that embarrass United States plaintiffs and affect the United States court's overall view of the suit. Finally, service abroad in violation of foreign law can jeopardize the enforceability within the foreign nation of any United States judgment that the plaintiff obtains.¹⁷

In general, counsel must determine whether the foreign nation is a signatory to the Hague Convention of the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638, to which the United States is a party. The convention allows civil process from state or federal courts to be served on persons located in any of the signatory nations and sets out the rules for each country that is a signatory. Some nations have added reservations that specify in detail how service is to be accomplished (e.g., for service in Germany, documents must be translated into German and sent to the Central Authority in a particular region), whereas others have no such requirements.

If there is no restriction on service, then you may serve the initial papers on the defendant or respondent by any means acceptable under your state's rules of service, such as by mail.¹⁸ When you use registered or certified U.S. mail, you will likely be using "APO" and "FPO" addresses, which are American military mail addresses. APO means *Army Post Office* and is generally used in Europe and the Middle East; FPO means *Fleet Post Office* and is generally used in the Far East and Pacific regions.

17. Cook, *supra* note 3, at 185–87 (citations omitted).

18. See Beverly L. Jacklin, *Annotation, Service of Process by Mail in International Civil Action as Permissible under Hague Convention*, 112 A.L.R. FED. 241 (2004).

If the postal clerk does not return the appropriate receipt, sends it back unsigned, or returns it signed by one other than the individual designated for restricted delivery, you might be able to obtain assistance from the supervisor. First, prepare a second set of the court papers that you want served. Put them into an envelope and address it to the SM, return receipt affixed, and sufficient postage paid. Put this envelope into a larger envelope and address the latter to the military postal officer for the APO or FPO at which the SM is located (e.g., Officer-in-Charge, Fleet Post Office, FPO San Francisco 98777). Address a cover letter in the outer pack to the supervisor, explaining your previous attempt to obtain a proper return receipt. Ask that proper postal procedures be followed to deliver the enclosed documents and to send you the properly executed receipt.¹⁹

Hague Service—An Overview

The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters is a treaty that establishes procedures to allow plaintiffs and petitioners to serve civil process on defendants and respondents in foreign nations.²⁰ Article 10(a) states that the Convention shall not restrict the freedom to send judicial documents by postal channels directly to individuals abroad so long as the destination nation does not object.

One author summarizes service of civil court documents abroad pursuant to the Hague Service Convention as follows:

The Hague Service Convention provides transnational litigants with a variety of acceptable methods of service of process. “The primary innovation of the Convention” is the development of a Central Authority for service of process. Although the Hague Service Convention permits other methods of service, a plaintiff may always resort to use of the Central Authority method “if another method . . . should fail.” In effect, the Central Authority method acts as a “safety valve.”

The “Central Authority” under the Hague Service Convention

The Hague Service Convention requires each contracting state to establish a Central Authority to receive requests from other contracting states for service of documents. The authority or judicial officer

19. For more information on how to serve overseas registered and return receipt requested mail, use any search engine to look for “international mail services.”

20. See Jacklin, *supra* note 18.

competent under the law of the state in which the documents originate submits the request, along with the documents to be served. The authority or officer submitting the request must ensure compliance with the language requirements of the Hague Service Convention regarding the request and the documents to be served.

The Central Authority of the receiving state reviews the request for compliance with the Hague Service Convention. If the request does not comply, the Central Authority promptly notifies the requester and specifies its objection. If the request complies with the Hague Service Convention, the Central Authority serves the document, or arranges for service by an appropriate agency. The Central Authority may serve the documents by either a method prescribed by its internal law for domestic actions, or by a particular method requested by the applicant, unless such a method is incompatible with the law of the Central Authority. If an applicant does not request a specific method of service, the Central Authority may serve process by delivery to an addressee who voluntarily accepts it. Known as “remise simple,” this method is by far the most broadly used approach in a substantial number of Contracting States.

After serving process, the Central Authority completes a certificate in the form of the model annexed to the Hague Service Convention and forwards it directly to the applicant. The certificate verifies service of the document and includes the method, the place and date of service, and the name of the person served. If service did not occur, the certificate sets out the reasons that prevented service.²¹

In further explanation, here is a summary from the official in charge of legal reviews of foreign civil process applications for U.S. armed forces in Europe:

Title 32 of the Code of Federal Regulations § 516.12(c), prescribes Department of the Army policy concerning service of state court process on Army personnel overseas, as follows:

Process of State courts. If a DA official receives a request to serve State court process on a person overseas, he or she will determine if the individual wishes to accept service voluntarily. Individuals will be permitted to seek counsel. If the person will not accept service voluntarily, the party requesting service will

21. Cook, *supra* note 3, at 192–94 (citations omitted).

be notified and advised to follow procedures prescribed by the law of the foreign country concerned.²² (See, for example, The Hague Convention, reprinted in 28 U.S.C.A. Federal Rules of Civil Procedure, following Rule 4.).

As noted in the preceding text, if the individual declines to accept voluntarily the documents, service can be effected overseas pursuant to the Hague Service Convention. The Convention came into force for the United States on February 10, 1969.

The Hague Service Convention provides for personal service of process by a Central Authority. A completed “Request and Summary” should be transmitted with the documents to be served directly to the appropriate Central Authority. A request form, USM-94, is found at <https://www.usmarshals.gov/forms/usm94.pdf>. Further information on the Hague Service Convention may also be obtained at https://www.usmarshals.gov/process/foreign_process.htm.

In connection with service by mail, the practitioner should be aware that it is the position of the U.S. Forces, consistent with that of the commentators in U.S.C.A. Federal Rules of Civil Procedure, Rule 4, that “if there is any ‘internationally agreed means’ for giving notice, that means must be used.”²³

The importance of using only approved methods of service under the Hague Convention or other internationally agreed means of service is illustrated in *Saysavanh v. Saysavanh*, a Utah Court of Appeals case from 2006.²⁴ After the wife left the husband and minor child in Utah and moved to Mexico, the husband filed for divorce. The papers, sent by registered mail, return receipt requested, came back unsigned. There was no evidence that the packet had been received by the wife. The wife did not enter an appearance, and the trial court entered a divorce by default against her.

22. See U.S. DEP'T OF ARMY, Reg. 27-40, LITIGATION (Sept. 19, 1994), ch. 2, para. 2-5.c.

23. Attachment to e-mail from P.J. Conderman, Chief, Foreign Law Branch, Office of the Judge Advocate, Headquarters, Europe and Seventh Army, to Mark E. Sullivan (Feb. 8, 2005) (on file with author) (Subject: Service of Process Abroad). Information concerning the service of process on persons assigned to or accompanying U.S. forces in Europe may be obtained from the Foreign Law Branch, International Law Division, Office of the Judge Advocate, Headquarters U.S. Army Europe and Seventh Army, Unit 29351 (Heidelberg, Germany), APO AE 09014, Phone: CIV +49 (0)6221-57-7388, DSN 314-370-7388.

24. *Saysavanh v. Saysavanh*, 2006 UT App. 385, 145 P.3d 1166 (Utah Ct. App. 2006). A summary of the case and its outcome is found in an article by Brett R. Turner in the October 2006 issue of *Divorce Litigation*, “*Saysavanh v. Saysavanh*: A Cautionary Tale about Serving Process upon a Foreign Defendant,” located at https://www.americanbar.org/content/dam/aba/administrative/family_law/committees/saysavanh_turner.pdf (last visited Oct. 13, 2018).

Two years later the wife moved to reopen the divorce default, arguing that she had not received the summons, and that she lacked actual notice of the divorce case in Utah. The trial court declined to set aside the default divorce and reopen the case; it held that the wife had been properly served under the Utah equivalent of Federal Rule of Civil Procedure 4; the state rule allows service “by delivery to the individual personally of a copy of the summons and the complaint or by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of court to the party to be served.”

In their appellate briefs the parties assumed that the issue revolved around state law. They did not note that Rule 4(d)(3) of the Utah Rules of Civil Procedure allows service by the methods set out in the rules only if there is no international treaty or other agreed upon means of service, or if the applicable international document allows alternate means of service. The service of process abroad is governed by the Hague Service Convention. Both Mexico and the United States are signatories. The means chosen by the plaintiff-husband, service by mail, was therefore allowable only if such service of process was permitted by the Hague Service Convention.

In their appellate briefs the parties assumed that there was no internationally agreed means for serving process in Mexico. They focused their arguments on whether service was perfected under state law. The appellate court, however, ruled that there was an internationally agreed means of service in Mexico, and that the state civil procedure rules required that service be made by any internationally agreed means reasonably calculated to give notice, such as through the Hague Service Convention. Thus the terms of the Convention controlled whether the service of process in Mexico was properly accomplished.

The Hague Service Convention provides for service through the Central Authority in each signatory country, with certain exceptions. No exception applied here, since there was evidence that Mexico had objected to the service of process in Mexico through the postal service. And neither the plaintiff-husband nor the clerk of court executed and submitted a request form for service of process pursuant to the Convention. As a result, process was ruled to be ineffective. The Utah Court of Appeals reversed the trial court’s decision refusing to reopen the default divorce judgment.

A party who attempts to serve process outside the United States through postal channels, simply because the Hague Service Convention is time-consuming (to understand it and to effect service), is heading for some bumps in the road. The best rule, when there is a signatory to the Convention, is to use the Central Authority for service. While other procedures may be used,

the fact is that many countries see service of process as a governmental function, and they object to the use of postal channels to accomplish this.

One alternative for counsel to explore is use of a waiver and acceptance of service to effect service. This may help to avoid the problems that occurred in the *Saysavanh* case.

Service of Process in Germany on Servicemembers and Dependents

The SMs in Germany are primarily Army and Air Force members. For serving SMs and their dependents in Germany, Paul J. Conderman, Special Advisor to the Judge Advocate, United States Army Europe, has the following advice:

Germany signed the Hague Service Convention November 15, 1965. It ratified the Convention on April 27, 1979, and it entered into effect there June 26, 1979.²⁵ The German instrument of ratification contained the following declarations:

1. Requests for service shall be addressed to the Central Authority of the Land where the request is to be complied with. [Note: see Footnote 25 for URL for list of offices]

The Central Authorities are empowered to have requests for service complied with directly by postal channels if the conditions for service in accordance with paragraph 1(a) of Article 5 of the Convention have been fulfilled. In that case the competent Central Authority will hand over the document to the postal authorities for service. In all other cases the local court (Amtsgericht) in whose district the documents are to be served shall be competent to comply with requests for service. Service shall be effected by the registry of the local court.²⁶

25. Germany has specified that the Ministry of Justice for the Land (German state) where the person to be served resides is the “Central Authority” under the Hague Service Convention. Further information on service of process is available at the U.S. State Department website concerning the Hague Service Convention, located at <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/Germany.html> (last visited Feb. 26, 2018). Information on the Central Authorities will be found at a link on the following web page: <https://www.hcch.net/en/states/authorities/details3/?aid=257> (last visited Feb. 26, 2018). Conderman notes that most U.S. military personnel are located in Baden-Wuerttemberg, Bavaria (Bayern), Hessen (Hesse), or Rhineland-Palatinate (Rheinland-Pfalz). See also https://assets.hcch.net/upload/auth14_de.pdf (last visited Feb. 26, 2018). The form to use, USM-94, may be found at <https://assets.hcch.net/docs/149aed1a-4b28-460f-b0d8-3ee011334a14.pdf> (last visited Feb. 26, 2018). The address of the appropriate Ministry of Justice should be entered in the box designated “address of receiving authority.”

26. The address of the appropriate Ministry of Justice should be entered on Form USM-94 in the box marked “address of receiving authority.”

Formal service (paragraph 1 of Article 5 of the Convention) shall be permissible only if the document to be served is written in, or translated into, the German language.

2. The Central Authority shall complete the certificate (paragraph 1 and 2 of Article 6 of the Convention) if it has itself arranged for the request for service to be complied with directly by postal channels; in all other cases this shall be done by the registry of the local court.

3. The Central Authority of the Land where the documents are to be served and the authorities competent under Section 1 of the Act of 18th December 1958 implementing the Convention on Civil-Procedure, signed at The Hague on 1st March 1954, to receive requests from consuls of foreign States, shall be competent to receive requests for service transmitted by a foreign consul within the Federal Republic of Germany (paragraph 1 of Article 9 of the Convention). Under that Act the president of the regional court (Landgericht) in whose district the documents are to be served shall be competent; in his place the president of the local court shall be competent if the request for service is to be complied with in the district of the local court which is subject to his administrative supervision.

4. In accordance with paragraph 2(a) of Article 21 of the Convention, the Government of the Federal Republic of Germany objects to the use of methods of transmission pursuant to Articles 8 and 10. Service through diplomatic or consular agents (Article 8 of the Convention) is therefore only permissible if the document is to be served upon a national of the State sending the document. Service pursuant to Article 10 of the Convention shall not be effected.

By a Note dated 19 November 1992, the Federal Republic of Germany made the following declaration:

1. Notwithstanding the provisions of the first paragraph of Article 15, a German judge may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled:

- the document was transmitted by one of the methods provided for in this Convention,
- a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,

—no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

2. An application for relief in accordance with Article 16 will not be entertained if it is filed after the expiration of one year following the termination of the time-limit which has not been observed.²⁷

Conderman points out that particular care must be exercised by the legal practitioner in serving civil process strictly by the rules:

In several cases, notably those attempting service in Germany, service was quashed because it conflicted with conditions Germany imposed in adopting the Convention. One condition Germany has imposed is that the papers served bear a German translation. Another is that service not be made by direct mail. In *Voorhees v. Fischer & Krecke*,²⁸ both conditions were breached and service was quashed. . . . A similar quashing of service in Germany was the result in *Harris v. Browning-Ferris Industries Chemical Services, Inc.*,²⁹ where the mail method used was one authorized by state law, adopted for federal use, and available even for foreign service under the pre-1993 version of Rule 4 and where again the papers served carried no translation. State courts, of course, equally bound by the Convention, hold the same way. An example is *Low v. Bayerische Motoren Werke, A.G.*³⁰

The provisions of the NATO Status of Forces Supplementary Agreement governing service of civil process have no application here. Those rules apply only to service of *German* civil process. Service of foreign process on U.S. Forces personnel in the Federal Republic of Germany (including process of U.S. state courts) is effected pursuant to the Hague Service Convention, cited earlier.³¹

The U.S. State Department has published information on its website on how to serve civil process in Germany.³² An outline on “Service of Process from the USA to Germany” is at Appendix 1-D.

27. Conderman, *supra* note 23.

28. *Voorhees v. Fischer & Krecke*, 697 F. 2d. 574 (4th Cir. 1983).

29. *Harris v. Browning-Ferris Indus. Chem. Services, Inc.*, 100 F.R.D. 775 (M.D. La. 1984).

30. *Low v. Bayerische Motoren Werke, A.G.*, 88 A.D.2d 504, 449 N.Y.S.2d 733 (1982) (USCA, FRCP Rule 4, pp. 64, 66).

31. Conderman, *supra* note 23.

32. <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/Germany.html> (last visited October 13, 2018).

Service of Process in Italy on Servicemembers and Dependents

The United States primarily stations Army, Navy, and Air Force personnel in Italy. Italy signed the Hague Service Convention on January 25, 1979. It ratified the Convention on November 25, 1981, and it entered into effect there January 24, 1982. The U.S. State Department has published on its website specific information on the service of documents in Italy.³³

Service of Process in the United Kingdom on Servicemembers and Dependents

Military personnel in the United Kingdom are primarily members of the Air Force. The State Department has posted an advisory on service of civil process in the United Kingdom at its website.³⁴

Service of Process in Japan on Servicemembers and Dependents

Members of the Army, Navy, Marine Corps, and Air Force are assigned to bases in Japan. Serving them and their accompanying family members in Japan is also governed by the Hague Convention.

The State Department has an advisory on service of civil process in Japan; it can be found at the Department's website.³⁵ There is also information on service in Japan at <https://www.hcch.net/en/states/authorities/details/3/?aid=261>.

Service of Process in South Korea on Servicemembers and Dependents

Military personnel in South Korea are primarily Army and Air Force. The State Department website provides information on the service of civil process in the Republic of Korea.³⁶

According to Brendon Carr, an American attorney in South Korea,

A complementary issue to enforcement of foreign judgments . . . is service of process on Korean-resident defendants. . . . Korea has acceded to the Hague Service Convention, an international treaty on the dispatch and delivery of judicial papers in civil litigation. That should make service of process easy. Except that in joining the

33. <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/Italy.html> (last visited Feb. 2, 2018).

34. <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/UnitedKingdom.html> (last visited Feb. 2, 2018).

35. <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/Japan.html> (last visited Feb. 2, 2018).

36. <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/KoreaRepublicof.html> (last visited Feb. 2, 2018).

Hague Service Convention, Korea objected to all of the elements of the treaty which would tend to make service easier—namely, service of process through postal mail, personal service, through consular officers of the litigant’s home country embassy, or service by publication. So what’s left? Well, the same means by which service is effected on Korean defendants in normal domestic litigation.

In Korea, the only party authorized to effect service of process on a defendant is the court. Service is dispatched to the defendant’s registered address by content-certified mail, by which both the fact of dispatch and the content of what’s been delivered is maintained by the post office.

So the Hague Service Convention essentially signs Korea up to a regime by which this country notifies the international community of an official address (the “Central Authority”) to which papers should be routed, together with an official form (downloadable PDF), so that the Korean court could put the papers into the mail here. That address . . . is:

Ministry of Court Administration
Attn.: Director of International Affairs
967 Seocho-dong, Seocho-gu
SEOUL 137-750, SOUTH KOREA

(Actually, the official address is “Republic of Korea” but I’ve found a lot of my own mail takes a side detour to Pyongyang in the “*Democratic People’s Republic of Korea*” if it’s labeled that way. . . . Better to use “South Korea” for something this important.)

The Ministry of Court Administration directs that correspondence to the MCA be done through state-to-state channels. Find out your country’s Central Authority under the Hague Convention, and do it through that agency. Americans: This means that service must be done through the Justice Department, or perhaps the Justice Department’s designated agent Process Forwarders International. One cannot simply mail documents to MCA, or hire an attorney or law firm, or private individual, to serve process or to put documents to the MCA through the Korean postal system. American lawyers should be aware that even if direct dispatch to MCA has worked for them in the past, the proper procedure is to go through Justice, at the state-to-state level.

There's one wrinkle: The Hague Service Convention allows a receiving state to require that the complaint and instructions for response be translated into the official language of that state. Korea requires all judicial papers to be in the Korean language, which means you'll be preparing a Korean-language translation for *all* Korean residents, even those who don't speak Korean. An American resident in Korea who receives service of process through Hague Service Convention will receive a complaint in the Korean language, even if that language is unintelligible to him.³⁷

The downloadable form mentioned earlier is the standard Form USM-94 for transmittal of documents under the Hague Convention, "Request for Service Abroad of Judicial or Extrajudicial Documents."

Service of Process in Other Countries

The State Department's website contains useful information for serving civil papers in other countries that are not signatories to the Hague Convention.³⁸ For information on non-signatory nations, consult the Office of Citizens' Consular Services. It might be necessary to hire an attorney in the foreign country or to retain the services of a private process server. All too often there are questions and more questions, but few answers.

Acceptance of Service

With all the rules and requirements for service abroad, one might legitimately ask whether a simple form for the defendant's acceptance of service is thus forbidden. When a country specifies that the service of foreign civil process within its borders must be accompanied by requirements A, B, and C, is it a violation of the rules and reservations under the Hague Service Convention to get (or attempt to get) the signature of "defendant John Doe" on a form that states that he accepts the summons and complaint or petition without the need to go through the formalities of service stated in the Rules of Civil Procedure?

There is no single answer as to violation, but a general answer would probably be "no." Obtaining the consent of the defendant to receipt of court documents is not a circumvention of the Hague Service Convention, since it does not involve the employment of agents of the state (whether local law enforcement officers, civil officials, or postal workers) to transmit

37. E-mail from Brendon Carr to the author, "Service of process—Korean Law Blog Contact," August 20, 2009, on file with the author.

38. See <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internal-judicial-asst.html> (last visited Feb. 2, 2018) for extensive information on service of legal documents abroad, obtaining evidence, enforcing judgments, authentications, and retaining a foreign attorney.

documents into the hands of John Doe. Voluntary receipt of civil court papers and waiver of the requirements of service are completely outside the framework of Hague Service Convention rules, or at least that is the argument that counsel should make.

In addition, counsel should remember that the Convention rules are not self-implementing. If there is a purported violation, the country involved does not come to the aid of the defendant; it is the defendant himself who must raise the objection, make the claim, and argue that the *acceptance of service* or the *general appearance and waiver of service* is somehow in violation of service rules. Analyzed properly, this argument fails due to equitable principles. How can a party execute a waiver or acceptance—designed to induce the plaintiff or petitioner to proceed with the case and not insist on precise performance of the rules of Hague Service Convention process—only to claim later on that he was duped, that he was misled, or that he agreed to something that he really couldn't agree to? Equitable estoppel bars a party from taking two different positions in a lawsuit, and equity will not allow a party whose actions lead to reliance on the validity of acceptance of service to later disavow the actions that the defendant took.

The keys to obtaining results from using an alternative to service involve several steps. First, you need to decide on the title and contents of the document that John Doe will be signing. The document could be titled *Acceptance of Service and Waiver* with the following suggested text: “The defendant, Staff Sergeant John M. Doe, C Company, 3rd Battalion, 4th Transportation Brigade, 3rd Corps Support Command, Vicenza, Italy, hereby accepts the summons and complaint in *Jane T. Doe v. John M. Doe*, 2018 CVD 123, Desert County, Colorado, and he waives formal service pursuant to the Colorado Rules of Civil Procedure.” Or it could be styled *Voluntary Entry of Appearance and Waiver* with this text: “The respondent, Staff Sergeant John M. Doe, C Company, 3rd Battalion, 4th Transportation Brigade, 3rd Corps Support Command, Vicenza, Italy, hereby acknowledges the receipt of the summons and petition in *In re Marriage of Doe, Jane T. Doe v. John M. Doe*, 2018 CVD 123, Desert County, Colorado; he enters voluntarily his appearance in this action and he waives formal service pursuant to the Colorado Rules of Civil Procedure.”

The document should also state that the signing party is executing it of his own free will (or voluntarily). It should also say that he knows the consequences of signing (i.e., that the moving party may request entry of an order or judgment against him for the relief requested in the complaint or petition, unless he raises defenses and/or counterclaims in response) and that he wants the case to proceed.

At the end of the document, just below the defendant's signature and date, you should insert a notarization. This could take the form of a simple acknowledgment, a statement that affirms that the notary has verified the identity of the defendant. Or it could be in the form of a *jurat*, that is, a sworn statement. The choice will depend on local practice, state rules, and what the attorney wishes to accomplish—a simple statement or the equivalent of an affidavit.

§ 1.05 Client Questions

When service of process difficulties make a prompt resolution of the case impossible, the client frequently becomes uneasy and begins questioning the attorney's competence. If the attorney has not spent time cautioning the client about delays and difficulties, there will be problems. Appendix 1-E is an e-mail dialogue that proved helpful in explaining to a client how service of process works.

§ 1.06 Translations

In some countries, service of process documents must be translated. When this involves the Hague Service Convention, see the Appendix in 28 U.S.C. for further information. To get a translation, you might want to try the nearest high school, college, or university for instructors skilled in a particular foreign language. In the alternative, contact the nearest consulate for the country involved. There is no need for a certified translation (unless specifically required by the country involved), but it needs to be accurate since it will be reviewed by the country's Central Authority.

§ 1.07 Obtaining Evidence Abroad

Occasionally it is necessary to obtain testimony, tissue samples, or the production of documents from a U.S. citizen who is in a foreign country. Most often evidence is required from the SM; however, evidence might also be required from the nonmilitary spouse or even a child living abroad. There are three methods of obtaining evidence abroad.

The first is by means of a subpoena pursuant to 28 U.S.C. § 1783. This section provides:

- (a) A court of the United States may order the issuance of a subpoena requiring the appearance as a witness before it, or before a person or body designated by it, of a national or resident of the United States