

## SERVICE OF PROCESS IN PROBATE PROCEEDINGS

The following is a listing of the various forms of service of notice or other process required by the various provisions of Missouri probate code, Chapters 472, 473, 474, and 475, RSMo, and the Missouri Rules of Civil Procedure to the extent those Rules apply to proceedings in the probate division. Following each form of service is a listing of the proceedings in which that form of service is required.

**It is the responsibility of the attorney to print any court prepared service documents (summons or notice of hearing), compile the service packet and deliver to the appropriate Sheriff's Department or Special Process Server.** The attorney will receive an Ennotice when the documents have been prepared and are available from CaseNet. Special Instructions for various proceedings are attached to this document. **Reminder** - if the St. Louis County Sheriff's Office is to do the service, the \$36.00 service fee per person to be served must be paid prior to the court issuing the service documents.

### **PERSONAL SERVICE - SUMMONS IN ACCORDANCE WITH RULES 54.13 (IN-STATE) AND 54.14 (OUT-OF-STATE), MO RULES OF CIVIL PROCEDURE**

All "Adversary Probate Proceedings," as defined in Local Court Rule 72.4 of the 21<sup>st</sup> Judicial Circuit and by Administrative Order of the Probate Judge issued March 3, 2014, to wit:

- (1) Trust Contests, Section 456.6-604, RSMo;
- (2) Removal of Trustee, Section 456.7-706, RSMo;
- (3) Breach of Trust, Section 456.10-1001, RSMo;
- (4) Disqualification of Beneficiary Designations for Fraud, Duress, or Undue Influence, Section 461.054.1, RSMo;
- (5) Fraud under Probate Code, Section 472.013, RSMo;
- (6) Discovery of Assets, Section 473.340, 475.160, RSMo;
- (7) Gifts in Fraud of Marital Rights, Section 474.150, RSMo;
- (8) Breach of Contract to Make a Will, Section 474.155, RSMo.

Actions for Accounting and Recovery of Assets, Section 461.300, RSMo;

All other proceedings involving the administration of a trust, Section 456.2-202.3, RSMo;

Any other matter designated by Order of the court as an "adversary probate proceeding" pursuant to Rule 41.01(b), Mo. R. Civ. Proc.

### **PERSONAL SERVICE - ORDER TO SHOW CAUSE IN ACCORDANCE WITH RULES 54.13 (IN-STATE) AND 54.14 (OUT-OF-STATE) MO RULES OF CIVIL PROCEDURE**

Actions for Accounting from and/or Breach of Fiduciary Duty of an Attorney-in- Fact Under the Durable Power of Attorney Law, Section 404.717, RSMo.

**PERSONAL SERVICE - NOTICE OF HEARING IN ACCORDANCE WITH RULES 54.13 (IN-STATE) AND 54.14 (OUT-OF-STATE), MO RULES OF CIVIL PROCEDURE**

Petition to Determine Priority of Death, Chapter 471, RSMo;  
Petition to Remove Fiduciary;  
Petition to Determine Liability of Defaulting Fiduciary;  
Petition of Surety for Judgment Over Against Principal;  
Petition for Restoration of Incapacitated/Disabled Adult (w/o consent of fiduciary).

**PERSONAL SERVICE - CITATION IN ACCORDANCE WITH RULES 54.13 (IN-STATE) AND 54.14 (OUT-OF-STATE), MO RULES OF CIVIL PROCEDURE**

Citation to Produce Will, Section 473.043.3, RSMo.

**PERSONAL SERVICE - NOTICE OF HEARING IN ACCORDANCE WITH CHAPTER 475, RSMO (SEE SPECIAL INSTRUCTIONS ON PAGES 4 AND 5)**

Petition for Appointment of Guardian/Conservator of Adult;  
Petition for Appointment of Guardian of Minor;  
Petition for Appointment of Conservator of Minor;  
Petition for Termination of Guardianship of Minor.

**SERVICE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED (SEE SPECIAL INSTRUCTIONS ON PAGES 4 AND 5)**

Petition to Construe Will, Section 474.520, RSMo;\*  
Petition to Determine Heirs, Section 473.663, RSMo;\*  
Petition to Require Administration, Section 473.020, RSMo;\*  
Petition to Dispense with Administration, Section 475.320, RSMo;\*  
Petition to Admit Lost Will or to Prove Will in Solemn Form;\*  
Petition for Letters of Administration for Absent Person, Section 473.697, RSMo;  
Petition to Compel Distributees to Refund, Sections 473.613, 473.637, RSMo;\*  
Petition to Bar Inheritance, Section 474.140, RSMo.\*

Any other matter for which service by certified mail is permitted under Rule 54.12 (b), Mo. R. Civ. Proc. and authorized by court order.

\*Delivery restricted to addressee only.

## **SERVICE BY PUBLICATION**

Petition to Determine Heirs, Section 473.663, RSMo;\*

Petition for Letters of Administration for Absent Person, Section 473.697, RSMo;\*\*

Petition for Appointment of Guardian of Minor;\*\*\*

Petition for Appointment of Conservator of Minor;\*\*\*

Any other matter for which service by publication is permitted under Rule 54.12(c), Mo. R. Civ. Proc. and authorized by court order.

\*In addition to certified mail listed above and ordinary mail listed below.

\*\*In addition to certified mail listed above.

\*\*\*In addition to personal service if the whereabouts of a parent are unknown.

## **ORDINARY (FIRST CLASS) MAIL (SEE SPECIAL INSTRUCTIONS ON PAGES 4 AND 5)**

Petition to Sell Real Estate, Section 473.493 RSMo;

Petition to Determine Heirs, Section 473.663, RSMo;\*

Petition to Require Administration, Section 473.020, RSMo;\*\*

Petition to Admit Lost Will or to Prove Will in Solemn Form;\*\*

Any other matter for which service by first class mail is permitted under Rule 54.16, Mo. R. Civ. Proc.

All other matters arising under the provisions of the probate code not listed above.

\*In addition to certified mail and publication listed above.

\*\*In addition to certified mail listed above.

## SPECIAL INSTRUCTIONS

### Petition for Appointment of Guardian and/or Conservator of Adult.

1. Must be **personally** served on the respondent – service on any other person is not good service. Service must be made by Sheriff – cannot use a Special Process Server.
2. Notice of Hearing form is attached to the *Notc to Respondent with Rights* docket code.
3. Service Packet for Respondent must include the following:
  - a. Notice of Hearing marked Return
  - b. Notice of Hearing marked Served
  - c. Copy of Petition for Appointment of Guardian and/or Conservator
  - d. Copy of Order Appointing Attorney for Respondent and for Setting Hearing
  - e. Copy of Exhibit B
  - f. Copy of Exhibit E- List of Witnesses
4. Service Packet for Spouse, if not petitioner, must include the following:
  - a. Notice of Hearing marked Return
  - b. Notice of Hearing marked Serve
  - c. Copy of Petition for Appointment of Guardian and/or Conservator
  - d. Copy of Order Appointing Attorney for Respondent and for Setting Hearing
  - e. Copy of Exhibit B
5. Service for all interested persons by ordinary mail:
  - a. Notice of Hearing
  - b. Copy of Petition for Appointment of Guardian and/or Conservator only.
  - c. Copy of Order Appointing Attorney for Respondent and for Setting Hearing

### Petition for Appointment of Guardian of Minor.

1. If both parents consent and waive service, no summons is required.
2. Service Packet for Natural Parents must include the following:
  - a. Summons marked Return
  - b. Summons marked Serve
  - c. Copy of Petition for Appointment of Guardian of Minor only.
3. If whereabouts of parent is unknown or identity of parent is unknown, service is by publication pursuant to Rule 52.12(c). An Affidavit of Due and Diligent Search must be presented and approved prior to issuance of the publication. Court will prepare publication and forward to requested newspaper.

### Petition for Appointment of Guardian and Conservator of Minor.

1. If both parents consent and waive service, no summons is required.
2. Service Packet for Natural Parents must include the following:
  - a. Summons marked Return
  - b. Summons marked Serve
  - c. Copy of Petition for Appointment of Guardian of Minor only.

3. If whereabouts of parent is unknown or identity of parent is unknown, service is by publication pursuant to Rule 52.12(c). An Affidavit of Due and Diligent Search must be presented and approved prior to issuance of the publication. Court will prepare publication and forward to requested newspaper.

#### Petition for Appointment of Conservator of Minor.

1. If both parents consent, no service or hearing is required. An interview should be scheduled with a member of the Legal Department. Please call (314) 615-2614 to schedule the appointment.
2. Once matter is set for hearing and if one parent will not consent –
  - a. Notice of the hearing along with a copy of Petition for Appointment of Conservator of Minor must be served on all interested parties by ordinary mail.
3. If whereabouts of parent is unknown or identity of parent is unknown, service is by publication pursuant to Rule 52.12(c). An Affidavit of Due and Diligent Search must be presented and approved prior to issuance of the publication. Court will prepare publication and forward to requested newspaper.

#### Petition for Termination of Guardianship of Minor.

1. If guardian and other parent consents and waives service, no summons is required.
2. Service Packet for Guardian or other Natural Parent must include the following:
  - a. Summons marked Return
  - b. Summons marked Serve
  - c. Copy of Petition for Appointment of Guardian of Minor only.
3. If whereabouts of parent is unknown or identity of parent is unknown, service is by publication pursuant to Rule 52.12(c). Court will prepare publication and forward to requested newspaper.

#### Additional Information on Specific Proceedings.

1. Petition to Admit Lost Will – Notice of the hearing, a copy of the Petition to Admit Will and a copy of the Last Will and Testament should be served on all interested parties by ordinary mail and certified mail on all heirs and legatees and any named personal representatives.
2. Objections to Final Settlement – Notice of the hearing should be served by ordinary mail upon all interested parties, including all beneficiaries.
3. Petition to Sell Real Estate in decedent's estate – Notice of the hearing should be served by ordinary mail upon all heirs and legatees and any other interested parties.