



GUIDANCE ON SERVICE OF PROCESS ON EXECUTIVE BRANCH DEPARTMENTS AND AGENCIES

As we continue our efforts to prevent the spread and impacts of coronavirus disease 2019 (COVID-19) in Colorado, I find it necessary to provide guidance to Executive Branch departments and agencies, as well as the public, concerning methods for service of process on the State during the COVID-19 disaster emergency.

FINDINGS

1. On March 5, 2020, the Colorado Department of Public Health and Environment's (CDPHE) public health laboratory confirmed the first presumptive positive COVID-19 test result in Colorado. Since then, the number of confirmed cases has continued to climb, and we have evidence of community spread throughout the State. I verbally declared a disaster emergency on March 10, 2020, and issued the corresponding Executive Order D 2020 003 on March 11, 2020. On March 25, 2020, I signed Executive Order D 2020 017, ordering Coloradans to stay at home whenever possible to prevent the further spread of COVID-19 throughout the State. The State has issued numerous Public Health Orders in conjunction with these Executive Orders.
2. As a result of the disruptions caused by the COVID-19 pandemic, various buildings in which State departments or agencies are located have been closed to the public. These closures have rendered those departments and agencies unavailable for purposes of effecting service of process on the departments and agencies with regard to summons, subpoenas, and other legal process for legal proceedings.
3. Because of the unavailability of these departments and agencies for receiving personal service at their regular places of business, there is a risk that process servers will attempt service on employees or officers of these State department and agencies at their personal homes, which would conflict with Executive Orders and Public Health Orders ordering social distancing.
4. In an effort to serve the public and help prevent the further spread of COVID-19 in the State, the judiciary has temporarily suspended certain normal operations of judicial and legal proceedings. As part of this temporary suspension, we must identify alternative methods for effecting service of process on State departments and agencies.
5. Alternative methods of service will appropriately balance the requirement of social distancing, while also preserving continuity of legal proceedings.

GUIDANCE

I am providing the following guidance to the public and State departments and agencies within the Executive Branch of the State of Colorado.

Guidance to Executive Branch Departments and Agencies:

1. If the offices of a State department or agency within the Executive Branch have been closed to the public, thereby rendering those offices inaccessible for purposes of effecting service of process, the department or agency must take the following steps:
 - a. Post a clear notice on its website concerning the steps it has taken to provide for alternative methods of accepting service of process. A sample notice is attached at the end of this Guidance.
 - b. Post physical copies of this notice at the primary physical entryways to the building where the department or agency is located.
 - c. For service of process on a department or agency in its own name or on an employee or officer sued in his/her official capacity, the department or agency must provide alternative means of service either by waiver or by physical service.
 - i. The notice posted by the department or agency must provide instructions for how to email a request for a waiver and acceptance of service. The notice must identify a dedicated email address that will be regularly monitored by employees of the department or agency. The department or agency should approve requests for waivers of service on the department, agency, or official sued in his/her official capacity, to the fullest extent possible.
 - ii. The notice must also include an announcement that the department or agency agrees to allow the Attorney General's Office to accept personal service on the department, agency, or official sued in his/her official capacity, through service on the Attorney General at the Colorado Department of Law's Office at the Ralph L. Carr Colorado Judicial Center, 1300 Broadway, Denver, Colorado, 80203. The Attorney General has agreed to facilitate the receipt of such service on behalf of State departments and agencies. Departments and agencies should work with their legal counsel at the Department of Law to establish procedures for the electronic transfer of materials received by the Attorney General on behalf of the department or agency.
 - d. For service of process on an employee sued in his/her individual capacity, the department or agency is not the proper recipient of such documents because the department or agency is not authorized to unilaterally waive service on behalf of

its employee without the employee's consent. Accordingly, each department or agency is authorized to direct its legal counsel at the Attorney General's Office to work with a party to arrange for a waiver of service on behalf of the individual employee.

Guidance to Members of the Public:

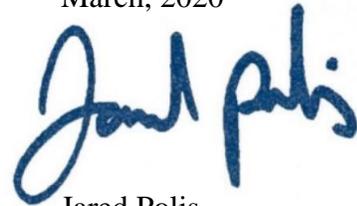
1. Members of the public and any process servers wishing to serve legal process on a State department or agency whose office is closed as a result of the COVID-19 disaster emergency are encouraged to avail themselves as much as possible of the alternative method of service through an email requesting a waiver of personal service. This approach achieves the greatest amount of social distancing. When sending an email requesting a waiver of service, the person or process server should include as attachments to the email all of the documents that are sought to be served as well as a waiver-of-service form. (Such forms are available at various courts' websites: [https://www.courts.state.co.us/Forms/PDF/JDF%201262\(a\)%20-%20Waiver%20and%20Acceptance%20of%20Service.pdf](https://www.courts.state.co.us/Forms/PDF/JDF%201262(a)%20-%20Waiver%20and%20Acceptance%20of%20Service.pdf) and <https://www.uscourts.gov/sites/default/files/ao399.pdf>.)
2. Members of the public or process servers who determine that they must make personal service of their legal papers on a State agency or department whose offices are closed will be required, upon entry at the Carr Judicial Center, to comply with all security and social distancing directions of the Colorado State Patrol (CSP). CSP maintains a regular watch at the Carr Judicial Center. The hours of public access to the Carr Judicial Center are 8 a.m. to 5 p.m. No service will be accepted outside of these hours.

Sample Notice of Availability of Alternative Service of Process

The offices of the Department of [name] at [physical address] are not open to the public at this time due to COVID-19. Because our building is closed and staff are working remotely, there is no one who can accept service of process of legal documents. Please be aware that if you need to serve legal documents on this Department, you may send a request for a waiver of personal service to [email address]. Your email should include all of the documents you need to serve as well as a waiver form for acceptance of the service. Our email account is regularly monitored, and we will respond to your request in due course. Alternatively, you may serve your legal documents on the Department by delivering them personally to the Attorney General's Office at the Colorado Department of Law's Office at the Ralph L. Carr Colorado Judicial Center, 1300 Broadway, Denver, Colorado, 80203. This Department has authorized the Attorney General to accept your service on behalf of the Department. Please bear in mind that in order to enter the Carr Judicial Center you will be required to comply with all security and social distancing directions of the Colorado State Patrol, which maintains a regular watch at the Carr

Judicial Center. The hours of public access to the Carr Judicial Center are 8 a.m. to 5 p.m. No service will be accepted outside of these hours.

GIVEN under my hand
this thirtieth day of
March, 2020

A handwritten signature in blue ink, appearing to read "Jared Polis". The signature is written in a cursive, flowing style.

Jared Polis
Governor