**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**FAMILY COURT**

DOMESTIC RELATIONS BRANCH

 **)**

**[PLAINTIFF][[1]](#footnote-1) )**

 **) Judge [JUDGE]**

**PLAINTIFF*,* ) [YEAR]-DRB-[####]**

 **)**

***v.* )**

 **)**

**[MOTHER] )**

 **)**

**and )**

 **)**

**[FATHER] ) Next hearing: [DATE AND TIME]**

 **)**

**DEFENDANTS*.* )**

 **)**

# **PLAINTIFF’S MOTION to AUTHORIZE ServICE by Posting**

Plaintiff, [PLAINTIFF] (“[PLAINTIFF]”), maternal grandmother and caretaker of [CHILD], through counsel, [ATTORNEY] of [FIRM], hereby requests that the court issue an order authorizing constructive service on the biological father, [FATHER], by posting notice in the Domestic Relations Clerk’s Office for twenty-one (21) days.

Respectfully submitted,

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ATTTORNEY] (D.C. Bar # [######])

[FIRM]

*Counsel for [PLAINTIFF]*

[ADDRESS]
 [CITY, STATE ZIP]

Phone: ([###])-[###]-[####]Fax: ([###])-[###]-[####]

[EMAIL]

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**FAMILY COURT**

DOMESTIC RELATIONS BRANCH

 **)**

**[PLAINTIFF][[2]](#footnote-2) )**

 **) Judge [JUDGE]**

**PLAINTIFF*,* ) [YEAR]-DRB-[####]**

 **)**

***v.* )**

 **)**

**[MOTHER] )**

 **)**

**and )**

 **)**

**[FATHER] ) Next hearing: [DATE AND TIME]**

 **)**

**DEFENDANTS*.* )**

 **)**

# **Memorandum of Points and Authorities in Support of PLAINTIFF’S MOTION to AUTHORIZE ServICE by Posting**

Plaintiff, [PLAINTIFF] (“[PLAINTIFF]”), maternal grandmother and caretaker of [CHILD], through counsel, [ATTORNEY] of [FIRM], hereby requests that the court issue an order authorizing constructive service on the biological father, [FATHER], by posting notice in the Domestic Relations Clerk’s Office for twenty-one (21) days.

## Factual background and procedural history

 On [DATE], Plaintiff filed a complaint for custody of the minor child, [CHILD] along with a consent answer and waiver of service signed by [HIS/HER] mother, [MOTHER][[3]](#footnote-3). That same day, the domestic relations clerk issued a summons for defendant [FATHER] (“[FATHER]”).The following outlines the efforts made to locate and serve the biological father, [FATHER]:

* 1. Plaintiff indicated that she last knew of [FATHER] living in either [STATE] or [STATE]. Upon information and belief, the last time that plaintiff and defendant [MOTHER] saw [FATHER] was in [YEAR] or [YEAR] and they have had no contact with him since that date.
	2. Online public record checks were conducted in Virginia, DC, and Maryland. In Virginia, there is one case in [CITY] general district court from [YEAR]. The case is a civil default judgment against [FATHER] for the amount of $[AMT] brought by [OPPOSING PARTY]. There is no address listed for the defendant in the case. There is also a [YEAR] civil case filed in [CITY] District court against [FATHER] by [OPPOSING PARTY] in the amount of $[AMT]. In DC, there are no cases; however, in Maryland there are two cases for [FATHER]. The first case was filed in [COUNTY] county district court in [YEAR] and relates to a civil judgment in the amount of $[AMT] against [FATHER] by [OPPOSING PARTY]. The address listed for the defendant was [ADDRESS]. The second Maryland case is the related [YEAR] case in [COUNTY] County Circuit court regarding the same civil judgment. His address in that case is also listed as [ADDRESS]. The public records check did not provide any other court cases in these three jurisdictions.
	3. A LexisNexis Accurint comprehensive background report was run on [FATHER]. A record turned up for [FATHER], aged [AGE], with several addresses listed in [CITY] and [CITY], [STATE]. According to the report, the most recent addresses dated from between [MONTH YEAR] to [MONTH YEAR]. According to the report, there was also a civil judgment entered in [YEAR] against [FATHER], whose address was listed as [ADDRESS].
	4. [DATE] – [FIRM/AGENCY] investigator [INVESTIGATOR] mailed certified copies of the Custody Complaint and summons to [FATHER] at [ADDRESS] and [ADDRESS]. An online check of certified mail tracking shows addresses as ‘undeliverable’; the letter was never signed for and was returned to sender.
	5. [DATE] – [FIRM/AGENCY] investigator [INVESTIGATOR] performed several internet searches on WhitePages.com, Yahoo! Search and 411.com to find further information about [FATHER]. Investigator [INVESTIGATOR] then mailed via certified mail a copy of the Custody Complaint and summons to [FATHER] at [ADDRESS], one of the addresses listed on the Accurint search as a recent address and previously found on public court records. Online check of the certified mail shows address as ‘undeliverable’, the mail was never signed for and was returned to sender on [DATE].
	6. [DATE] – Investigator [INVESTIGATOR] conducted further online searches for [FATHER] in [STATE]. Investigator [INVESTIGATOR] found a website for [COMPANY], a company located in [CITY], [STATE]. [FATHER] was listed on their website as an employee specializing in [SPECIALIZATION] ([WEB ADDRESS]). Investigator [INVESTIGATOR] called the company at ([###])-[###]-[####] to inquire about [FATHER]. The person who answered the phone would not identify himself but said that [FATHER] “no longer works for [them]” and that they hope to “never hear from him again”. The man who answered the phone also informed Investigator [INVESTIGATOR] that they do not have a forwarding address for [FATHER].
	7. [DATE] – Investigator [INVESTIGATOR] contacted [PROCESS SERVERS] located in [CITY, STATE] to attempt personal service of [FATHER] at [ADDRESS]. Process server, [PROCESS SERVER], noted that the house was vacant and under renovations and that there was no record of [FATHER] living at the residence.
	8. [DATE] – According to the LexisNexis Accurint search, a [FATHER] has relatives living in [CITY, STATE]. Searches for [FATHER] revealed potential addresses in [STATE], [STATE], and [STATE]. An internet search for [FATHER]’s potential address in [STATE] listed a phone number. Investigator [INVESTIGATOR] called the listed phone number, which was disconnected.
	9. [DATE] – Undersigned counsel obtained an alias summons issued by the Central Intake Center at D.C. superior court as the original summons had expired**.**
	10. [DATE] – Investigator [INVESTIGATOR] mailed certified copies of custody complaint and notice of hearing to thirteen (13) potential addresses for [FATHER] listed in LexisNexis Accurint search. As of this date, two envelopes have been signed for. The first was mailed to [ADDRESS] and was signed for on [DATE] by [SIGNEE], who lives at the address with a possible relative of [FATHER], named [POSS. RELATIVE]. Investigator [INVESTIGATOR] attempted to find a phone number for [SIGNEE], none was listed and he was therefore unable to call the signee of the letter. The second signed letter was mailed to [ADDRESS] and was signed for on [DATE] by [SIGNEE 2], an individual with the same last name as defendant [FATHER]. A possible phone number was listed for [SIGNEE 2]. Investigator [INVESTIGATOR] called the phone number which was disconnected. Seven (7) of the letters mailed have been returned to sender as undeliverable, the other four are still outstanding and have not been delivered. Letters sent to the following addresses were undeliverable: [ADDRESS]; [ADDRESS]; [ADDRESS]; and [ADDRESS].
	11. A records search on [DATE] of the [COUNTY] County public database (which includes [CITY], [STATE]) for civil and criminal cases yielded no results for [FATHER]. (*See* [COUNTY DATABASE WEB ADDRESS]).
	12. [DATE] – An online check using USPS tracking of the three outstanding certified mailings to [FATHER] showed the letter mailed to [ADDRESS] as undeliverable, the house is currently vacant but a notice has been left. The letter mailed to [ADDRESS] shows a notice was left at the residence on [DATE] but has not been claimed. The letter mailed to [ADDRESS] shows the letter was attempted to be delivered on [DATE] but was unclaimed.
	13. [DATE] – Investigator [INVESTIGATOR] ran a search on the Bureau of Prisons website and learned that no one by the name of [FATHER] has been imprisoned between 1982 and present.
	14. [DATE] – One additional letter was returned to sender, investigator [INVESTIGATOR], from address [ADDRESS]. The return to sender sticker indicated that [FATHER] has “moved left no address, unable to forward”.
	15. [DATE] – Final three letters returned to sender, investigator [INVESTIGATOR]. Address at [ADDRESS] is listed as vacant and unable to forward. Address at [ADDRESS] is listed as “moved left no address, unable to forward”. Address at [ADDRESS] was returned as unclaimed. There are currently no more outstanding pieces of certified mail sent to [FATHER]. There are also no additional addresses available to attempt according to Investigator [INVESTIGATOR]’s searches.

The biological father, [FATHER], has not been served because all efforts to locate him have been unsuccessful.

## The court should order constructive service by posting because a diligent search was not able to locate [FATHER]

Service of the summons for a complaint for custody shall be made on each party who is named on the complaint. Super. Ct. Dom. Rel. R. 4 (a). Although personal service is generally preferred, the superior court domestic relations rules and the Comprehensive Youth Adjustment Act of 2016 provide circumstances in which constructive service is permitted. The court must assess whether the plaintiff made diligent efforts to locate the party to be served. The court of appeals has held that a showing of diligent but futile efforts to ascertain the whereabouts of the defendant is a prerequisite to an order substituting publication for personal service. *Bearstop v. Bearstop*, 377 A.2d 405, 408 (D.C. 1977). Also, the Supreme Court recognized in *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306 (1950):

[I]n the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree foreclosing their rights.

*Id.* at 317 (citations omitted).

Constructive service is appropriate in this case because it has not been possible to effect personal service. Although the identity of [FATHER], the biological father, is known, his current dwelling or usual place of abode is unknown. Upon information and belief, [FATHER] has not visited his child, [CHILD], since birth. It is believed that [FATHER] is alive, and thus no morgues were checked. Also, neither the plaintiff nor [MOTHER] has personal knowledge that [FATHER] is or has ever been in any branch of the military. Counsel for the plaintiff expended substantial effort to effect service on the biological father. These efforts have been futile. Attempts to serve the biological father by certified mail have been made several times at no fewer than thirteen different addresses. All efforts to locate a current telephone number for the biological father were unsuccessful. It is highly unlikely, due to the lack of involvement in [CHILD]’s life and absence of current information about [FATHER], that exploring additional channels would prove fruitful. Thus, personal service will not be an effective means of notice and the court should authorize constructive service by posting.

## The court should order service by posting, as opposed to publication, because service by publication will create a substantial hardship for plaintiff [PLAINTIFF]

Constructive service is permitted upon “authorization” of the court. Super. Ct. Dom. Rel. R. 4 (f). The court may allow constructive service by publication if the plaintiff is able to show that the defendant “[cannot be found and is shown by affidavit to be a nonresident or to have been absent from the District for at least 6 months]” or “[cannot be found after diligent efforts or who by concealment seeks to avoid service of process].” D.C. Code § 13-336 (a) (2001) (amended 2016). If the plaintiff is able to show [one of the factors outlined above], then service by posting, as opposed to publication, is permitted if “publication would impose a substantial hardship.” Super. Ct. Dom. Rel. R. 4 (g), D.C. Code § 13-340 (a) (2001). If a substantial hardship can be shown, the court may authorize constructive service by posting notice in the Domestic Relations Clerk’s Office for twenty-one (21) days. D.C. Code § 13-340 (a).

Posting in the Domestic Relations Clerk’s office, as opposed to publication, should be authorized in this case for several reasons. Unfortunately, neither method of service offers much prospect of actual notice;[[4]](#footnote-4) yet publication costs more,[[5]](#footnote-5) takes more time and trouble,[[6]](#footnote-6) and therefore creates more of a potential for greater delay.[[7]](#footnote-7) However, the cost of publication would create a “substantial hardship” for the Plaintiff, [PLAINTIFF]. *See* Super. Ct. Dom. Rel. R. 4 (g). [PLAINTIFF]’s Motion to Proceed *In Forma Pauperis* was granted in this case on [DATE]. As an unemployed caregiver of two children, [CHILD] and [CHILD] (who is the child in related case [YEAR]-DRB-[####]), [PLAINTIFF] would find it difficult to pay the costs of publication without significant hardship to her and her family. Posting is therefore the most appropriate option in this case because [FATHER] has not been located after diligent efforts. As such, in order to most expeditiously ensure permanency for [CHILD], [PLAINTIFF] should be allowed to serve [FATHER] by posting and not publication.

1. **Conclusion**

 WHEREFORE, the plaintiff respectfully requests that the court approve the relief sought herein by granting this motion, and award such other and further relief as the court finds just and proper.

Respectfully submitted,

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ATTTORNEY] (D.C. Bar # [######])

[FIRM]

*Counsel for [PLAINTIFF]*

[ADDRESS]
 [CITY, STATE ZIP]

Phone: ([###])-[###]-[####]Fax: ([###])-[###]-[####]

[EMAIL]

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**FAMILY COURT**

DOMESTIC RELATIONS BRANCH

 **)**

**[PLAINTIFF][[8]](#footnote-8) )**

 **) Judge [JUDGE]**

**PLAINTIFF*,* ) [YEAR]-DRB-[####]**

 **)**

***v.* )**

 **)**

**[MOTHER] )**

 **)**

**and )**

 **)**

**[FATHER] ) Next hearing: [DATE AND TIME]**

 **)**

**DEFENDANTS*.* )**

 **)**

ORDER

This matter is before the court upon consideration of plaintiff’s motion to authorize service by posting on the biological father, [FATHER]. The instant case involves a complaint for custody for one minor child, filed [DATE]. Plaintiff has filed an extensive motion, providing the details of her diligent search for the defendant, [FATHER]. For the sake of brevity, the court will not repeat those details herein. It suffices to say that the court is satisfied that the plaintiff has made a diligent investigation of the defendant’s whereabouts for purposes of ordinary service of process. The search was not successful. Futhermore, the plaintiff has given an adequate explanation of why she should be allowed to serve the defendant through posting in the Clerk’s Office rather than by publication in a newspaper. The reason is economic.

**WHEREFORE**, it is by the court this \_\_\_\_ day of [MONTH, YEAR],

**ORDERED** that plaintiff’s motion to authorize service by posting is hereby granted; and it is

**FURTHER ORDERED** that plaintiff may serve the defendant by posting for twenty-one calendar (21) days in the Domestic Relations Clerk’s Office.

Judge [JUDGE].
(Signed in Chambers)

Copies to:

[ATTTORNEY]

[FIRM]

[ADDRESS]
[CITY, STATE ZIP]

*Counsel for [PLAINTIFF]*

[FATHER]

[ADDRESS]

(Last Known Address)

*Birth father*

# **Certificate of Service**

 I hereby certify that a copy of the Plaintiff’s Motion to Authorize Service by Posting has been mailed first-class, postage prepaid this \_\_\_\_\_day of [MONTH YEAR] to:

[FATHER]

[ADDRESS]

[CITY, STATE ZIP]

(Last Known Address)

*Birth father*

Respectfully submitted,

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [ATTTORNEY]

1. Plaintiff, [PLAINTIFF] was granted *In forma pauperis* status on [DATE]. [↑](#footnote-ref-1)
2. Plaintiff, [PLAINTIFF] was granted *In forma pauperis* status on [DATE]. [↑](#footnote-ref-2)
3. [BIO MOM] also indicated her consent to her mother, the Plaintiff, having custody of [CHILD], orally in open court on [DATE]. [↑](#footnote-ref-3)
4. *See Mullane*, 339 U.S. at 317 (referring to publication for a missing or unknown person as “a probably futile means of notification”). [↑](#footnote-ref-4)
5. There is no cost associated with posting. The cost for publication depends on the number of newspapers in which publication is to occur and the amount charged by each paper. Service by publication in any one newspaper may cost from $110 to $300. [↑](#footnote-ref-5)
6. Posting in the Domestic Relations Clerk’s office is for 21 days and requires no action by the Plaintiff once posting is approved. By contrast, Plaintiff or Plaintiff’s counsel must arrange for publication and must arrange to obtain and file an affidavit from the publisher demonstrating that publication has occurred. [↑](#footnote-ref-6)
7. Because posting is easy to arrange and accomplish, posting is far less likely than publication to result in unforeseen delay. [↑](#footnote-ref-7)
8. Plaintiff, [PLAINTIFF] was granted *In Forma Pauperis* status on [DATE]. [↑](#footnote-ref-8)