

Instructions for Service of Summons and Complaint

The following information is intended to clarify the process for accomplishing service of a complaint in a civil case. Before attempting to make service you should read Federal Rule of Civil Procedure 4 in its entirety because you are the one ultimately responsible for making sure that service is accomplished according to the rules. A copy of rule 4 is attached to these instructions. Please be aware that the judges' staffs and the Clerk's office staff are prohibited by law from giving legal advice.

WAYS TO ACCOMPLISH SERVICE

Service may be made in one of two ways: 1) personal service; 2) or, service by first class mail.

Personal Service

If you elect to have the defendant personally served you must arrange to have a summons and complaint served upon the defendant(s) by a person who is not a party and who is at least 18 years of age. If you completed summons forms and submitted them at the same time that you filed your complaint then they have been enclosed. These summons have been signed and sealed by the Clerk's Office. If you did not submit summons forms for each defendant at the time of the filing of your complaint it is assumed that you will be attempting to make service by mail and no summons will be issued.

Service by First Class Mail

If you elect to make service by mail you must mail a copy of the complaint to the person to be served. You must include with the complaint two copies of a Notice of Lawsuit and Request for Waiver of Service for Summons and a Waiver of Service of Summons [copies of which are attached to these instructions] and a return envelope that is addressed to you (the sender) with postage prepaid by you. When you receive the waiver back from the defendant you must then file it with the court. This method of service may only be used for service upon an individual, corporation, or association subject to service under F.R.Cv.P. 4(e), (f), or (h). **THIS METHOD OF SERVICE MAY NOT BE USED IN ACTIONS AGAINST FEDERAL, STATE, OR LOCAL GOVERNMENTS OR THEIR AGENCIES.**

The Notice of Lawsuit and Request for Waiver of Service of Summons must be completely filled out by you before being mailed to the defendant. You must indicate, in the appropriate spot, the date by which the waiver must be returned to you. You must allow the defendant at least 30 days from the date the waiver is sent to return the waiver to you. If the defendant is addressed outside of the United States then at least 60 days must be allowed for return of the waiver to you.

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If the defendant fails to comply with your request for waiver of service then you must serve the defendant personally. To accomplish this you must bring in completed summons forms to the Clerk's Office and ask that the Clerk issue summons. In the alternative, you may send a letter to the clerk requesting that summons be issued. The Clerk's Office will issue the summons in blank and return them to you. You must then fill out the summons form with all required information. Each summons must have your name and address in the space labeled plaintiff's attorney. You must also include information on how long a defendant has to answer you complaint. The response time for a defendant residing within this state is 20 days; 60 days for an out of state resident or U.S. Government defendant.

Please note that certified mail IS NOT an acceptable method of service. A certified mail receipt will not satisfy the requirements of F.R.Cv.P. 4(d)(2).

TIME LIMIT FOR SERVICE

You are responsible for prompt service of the summons and a copy of the complaint. The summons and complaint must be served on each defendant/respondent within 120 days after the filing of complaint. If you attempt to make service by mail and the defendant fails to waive service by returning the waiver form, the defendant must be personally served before the expiration of the 120 days. If service is has not been made in that time, and good cause is not shown for that failure, the action can be dismissed without prejudice. F.R.Cv.P. 4(j).

PERSON TO BE SERVED

F.R.Cv.P. 4(e), (f), (g), (h), (i), and (j) tell you who must be served. You should read these portions of the rule carefully to make sure that you are serving the appropriate person(s).

RETURN OF SERVICE

If service is made in person then the person serving the summons and complaint must make proof of service to the court in the form of an affidavit. If service is made by mail then you must file with the court the original waiver of service form that you received back from the person served. F.R.Cv.P. 4(l).

**NOTICE OF LAWSUIT AND REQUEST FOR
WAIVER OF SERVICE OF SUMMONS**

TO: (A) _____
as (B) _____ of (C) _____

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed.) A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the (D) _____ District of _____

and has been assigned docket number (E) _____

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) _____ days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States.)

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this _____ day of _____

Signature of Plaintiff's Attorney
or Unrepresented Plaintiff

- A - Name of individual defendant (or name of officer or agent of corporate defendant)
- B - Title, or other relationship of individual to corporate defendant
- C - Name of corporate defendant, if any
- D - District
- E - Docket number of action
- F - Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver.

WAIVER OF SERVICE OF SUMMONS

TO: _____
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, _____, acknowledge receipt of your request
(DEFENDANT NAME)

that I waive service of summons in the action of _____
(CAPTION OF ACTION)

which is case number _____ in the United States District Court
(DOCKET NUMBER)

for the _____ District of _____

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after _____
(DATE REQUEST WAS SENT)
or within 90 days after that date if the request was sent outside the United States.

(DATE) (SIGNATURE)

Printed/Typed Name: _____

As _____ of _____
(TITLE) (CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

AMENDMENTS TO THE
FEDERAL RULES OF CIVIL PROCEDURE
AND FORMS

Rule 1. Scope and Purpose of Rules

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

Rule 4. Summons

(a) Form. The summons shall be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff. It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. The court may allow a summons to be amended.

(b) Issuance. Upon or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is in proper form, the clerk shall sign, seal, and issue it to the

2 RULES OF CIVIL PROCEDURE

plaintiff for service on the defendant. A summons, or a copy of the summons if addressed to multiple defendants, shall be issued for each defendant to be served.

(c) Service with Complaint; by Whom Made.

(1) A summons shall be served together with a copy of the complaint. The plaintiff is responsible for service of a summons and complaint within the time allowed under subdivision (m) and shall furnish the person effecting service with the necessary copies of the summons and complaint.

(2) Service may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, however, the court may direct that service be effected by a United States marshal, deputy United States marshal, or other person or officer specially appointed by the court for that purpose. Such an appointment must be made when the plaintiff is authorized to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 or is authorized to proceed as a seaman under 28 U.S.C. § 1916.

(d) Waiver of Service; Duty to Save Costs of Service; Request to Waive.

(1) A defendant who waives service of a

summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

(2) An individual, corporation, or association that is subject to service under subdivision (e), (f), or (h) and that receives notice of an action in the manner provided in this Paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request

(A) shall be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer or managing or general agent (or other agent authorized by appointment or law to receive service of process) of a defendant subject to service under subdivision (h);

(B) shall be dispatched through first-class mail or other reliable means;

(C) shall be accompanied by a copy of the complaint and shall identify the court in which it has been filed;

(D) shall inform the defendant, by means

of a text prescribed in an official form promulgated pursuant to Rule 84, of the consequences of compliance and of a failure to comply with the request;

(E) shall set forth the date on which the request is sent;

(F) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed outside any judicial district of the United States; and

(G) shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing. If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

(J) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint

until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside any judicial district of the United States.

(4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and complaint had been served at the time of filing the waiver, and no proof of service shall be required.

(5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under subdivision (e), (f), or (h), together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.

(e) Service Upon Individuals Within a Judicial District of the United States. Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in any judicial district of the United States:

(1) pursuant to the law of the state in which the district court is located, or in which service is effected, for the service of a summons upon a defendant in an action brought in the courts of general jurisdiction of the State; or

(2) by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing there; or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(f) Service Upon Individuals in a Foreign Country Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within any judicial district of the United States:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed

means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(A) In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(B) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country, by

(1) delivery to the individual personally of a copy of the summons and the complaint; or

(11) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

(g) Service Upon Infants and Incompetent Persons. Service upon an infant or an incompetent person in a

Judicial district of the United States shall effected in the manner prescribed by the law of the state in which the service is made for the service summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state. Service upon an infant or incompetent person in a place not within a judicial district of the United States shall be effected in the manner prescribed by paragraph (2)(1) or (2)(B) of subdivision (f) or by such means as the court may direct.

(b) Service Upon Corporations and Associations Unless otherwise provided by federal law, service upon a domestic or foreign corporation or upon a partnership or other unincorporated association that is subject to suit under a common name, and from which a waiver of service has not been obtained and filed shall be effected:

(1) In a judicial district of the United States in the manner prescribed for individuals by subdivision (a)(1), or by delivering a copy of the summons and of the complaint to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one

authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant, or

(2) In a place not within any judicial district of the United States in any manner prescribed for individuals by subdivision (f) except personal delivery as provided in paragraph (2)(C)(1) thereof.

(4) Service Upon the United States, and Its Agencies, Corporations, or Officers.

(1) Service upon the United States shall be effected

(A) by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the office of the United States attorney and

(B) by also sending a copy of the summons and of the complaint by registered or

certified mail to the Attorney General of the United States at Washington, District of Columbia, and

(C) In any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to the officer or agency.

(2) Service upon an officer, agency, or corporation of the United States shall be effected by serving the United States in the manner prescribed by paragraph (1) of this subdivision and by also sending a copy of the summons and of the complaint by registered or certified mail to the officer, agency, or corporation.

(3) The court shall allow a reasonable time for service of process under this subdivision for the purpose of curing the failure to serve multiple officers, agencies, or corporations of the United States if the Plaintiff has effected service on either the United States attorney or the Attorney General of the United States.

(3) Service Upon Foreign, State, or Local Governments.

(1) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608.

(2) Service upon a state, municipal corporation, or other governmental organization subject to suit shall be effected by delivering a copy of the summons and of the complaint to its chief executive officer or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

(k) Territorial Limits of Effective Service.

(1) Service of a summons or filing a waiver of service is effective to establish jurisdiction over the person of a defendant

(A) who could be subjected to the jurisdiction of a court of general jurisdiction in the state in which the district court is located, or

(B) who is a party joined under Rule 14 or Rule 19 and is served at a place within a judicial district of the United States and not more than 100 miles from the place from which the summons issues, or

(c) who is subject to the federal interpleader jurisdiction under 28 U.S.C. 1335, or

(D) when authorized by a statute of the United States.

(2) If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service is also effective, with respect to claims arising under federal law, to establish personal jurisdiction over the person of any defendant who is not subject to the jurisdiction of the courts of general jurisdiction of any state.

(1) Proof of Service. If service is not waived, the person effecting service shall make proof thereof to the court. If service is made by a person other than a United States marshal or deputy United States marshal, the person shall make affidavit thereof. Proof of service in a place not within any judicial district of the United States shall, if effected under paragraph (1) of subdivision (f), be made pursuant to the applicable treaty or convention, and shall, if effected under paragraph (2) or (3) thereof, include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(m) *Time Limit for Service.* If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (j)(1).

(n) *Seizure of Property; Service of Summons Not Feasible.*

(1) If a statute of the United States so provides, the court may assert jurisdiction over property. Notice to claimants of the property shall then be sent in the manner provided by the statute or by service of a summons under this rule.

(2) Upon a showing that personal jurisdiction over a defendant cannot, in the district where the action is brought, be obtained with reasonable

efforts by service of summons in any manner authorized by this rule, the court may assert jurisdiction over any of the defendant's assets found within the district by seizing the assets under the circumstances and in the manner provided by the law of the state in which the district court is located.

Rule 4.1. *Service of Other Process*

(a) *Generally.* Process other than a summons as provided in Rule 4 or subpoena as provided in Rule 45 shall be served by a United States marshal, a deputy United States marshal, or a person specially appointed for that purpose, who shall make proof of service as provided in Rule 4(1). The process may be served anywhere within the territorial limits of the state in which the district court is located, and, when authorized by a statute of the United States, beyond the territorial limits of that state.

(b) *Enforcement of Orders: Commitment for Civil Contempt.* An order of civil commitment of a person held to be in contempt of a decree or injunction issued to enforce the laws of the United States may be served and enforced in any district. Other orders in civil contempt proceedings shall be served in the