

3.05 | SERVICE OF PROCESS

"Service of process," is the procedure that officially notifies a defendant in person that a lawsuit has been filed against him or her. When "served" the defendant receives a copy of the complaint so that he/she knows what the lawsuit is about. Further, the summons (discussed above) notifies the defendant when they must respond to the complaint. Under Federal Rule of Civil Procedure 4, you must either obtain a waiver of service from each defendant or serve each defendant through formal service or personal service within 90 days after the complaint has been filed in district court. Mailed summons are typically not allowed.

1. Waiver of Service⁸

"Waiving service" means agreeing to give up the right to service in person and instead accepting service by mail. If a defendant waives service, the plaintiff (you) will not have to go to the trouble or expense of serving that defendant. If the defendant agrees to waive service, you need to have the defendant sign and send back to you, a form called a "waiver of service," which you then file with the Court. To complete the "waiver of service" process, you must complete two forms and set certain documents to the defendant(s). The two forms you need to complete are:

a. "Notice of a Lawsuit and Request to Waive Services of Summons"

b. "Waiver of Service of Summons."

Both forms are available at the Clerk's Office or on the District Court's website.

The documents you need to send to each named defendant are:

- a. A copy of the complaint you filed;
- b. One completed Notice of Lawsuit Form;
- c. Two completed Waiver Forms; and
- d. One self-addressed stamped envelope (for the defendant's return of the Waiver Forms).

If a defendant sends back the signed waiver of service, you do not need to do anything else to serve the defendant. You simply need to file the defendant's signed waiver with the Court and save a copy for your files. If the defendant does not return a signed



waiver of service by the due date, you need to arrange to serve that defendant in one of the other ways approved by Federal Rule of Civil Procedure 4 (see below).

2. Formal service (no waiver)

If the defendant does not return the waiver of service form within the specified time, you must notify the Clerk of the court in writing, prepare a summons for each Defendant, and ask the Clerk's Office to issue the summonses you prepared.⁹ You may ask the Court to order the defendant to pay the costs you incurred serving that defendant. You must serve the defendant within 90 days from the filing date of the complaint (or, if you applied for IFP, from the date the Court ruled on your IFP application). If you do not properly complete service of process within the 90-day deadline, your case may be dismissed. Be sure to carefully check the FRCP to make sure you properly serve the defendant(s) you named in the complaint.

3. Personal service

Service of process may be accomplished by "personal service." This means that the summons and complaint are hand-delivered to the defendant. You, as the plaintiff, CANNOT personally serve the defendant. However, another person can personally serve the defendant if that person 1) is at least 18 years of age and 2) is not a plaintiff or defendant in the case. Alternatively, you can hire a private process server to serve the defendant for a fee. In either case, Federal Rule of Civil Procedure 4 requires you to file proof with the Court that the complaint has been served on the defendant. The person serving the summons must leave a copy of both the summons form and the complaint with the defendant. On the back of the summons is a section

If the above service methods are not available, consult Federal Rule of Civil Procedure 4 and any Local Rule applicable for your District Court.

If you name as a defendant the United States, a United States agency, or an officer or employee of the United States (who is being sued for acts or omissions related to his/her employment), you must serve the complaint and summons on three individuals:

1. the named defendant;



2. the Attorney General of the United States in Washington, D.C.; and

3. the United States Attorney for the District Court in which you are filing your complaint.

The waiver of service rule DOES NOT APPLY to the United States. Formal service upon the federal government or any of its agencies can be accomplished by certified mail (return receipt required) with the properly executed summons.

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Honorable Mention: USNYND, USCAND)

Footnotes

⁸ The waiver of service rule does not apply if the United States is named as a defendant.

⁹ The only exception to this rule is if you are incarcerated AND are suing a government official. In that case, you should wait for the judge to complete a preliminary review, after which you will receive an order from the Court and should follow the instructions in that order regarding service. referred to as the return of service or “proof of service,” which must be completed by the person who served the summons. The person who serves the summons must record his or her name, the name of the person whom he or she served, and the date and time of the service. Service of process is not complete until the original summons form, with the completed return of service, has been filed with the court.

