

6.03 | SERVING THE COMPLAINT (THIRD STEP)

Service of process is the procedure used to notify a defendant of the lawsuit. Because it is fair and important for someone to have an opportunity to respond to allegations and defend against a claim, service of process is required by law, is exacting, and must be done in one of several specific ways. If service of process is not done according to the law, the court may dismiss your complaint. Rule 4 of the Federal Rules of Civil Procedure states the requirements for service of process. (Note that Rule 4 includes special requirements for service when suing the United States, one of its agencies, or one of its employees.)

If you are the one suing, you must fill out a summons forms (one for each defendant) and present it to the clerk's office, where a clerk will sign the form and stamp it with the court's seal. From there, you will need a copy of each official summons (the one with the clerk's signature and seal) and a copy of the complaint and any of its attachments (one copy for each defendant). You must serve those documents on each defendant within 90 days of filing the complaint or risk dismissal of your action.

There are three ways to serve process:

- **Personal Service.** You can tell someone else to personally deliver or serve the summons and complaint. The server must be older than 18 and may not be a party in the action. The server then must complete and sign the back of the original summons form and return it to you so you can file it with the court. That is called the return of service. It is proof to the court that the defendant knows about the action.
- **Waiver of Service.** A defendant may waive service, which means the defendant agrees to respond to the complaint even though you did not personally serve the defendant with the summons and complaint. You can get waiver-of-service forms from the clerk's office or from the court's website:

Form 1:

www.uscourts.gov/sites/default/files/ao398.pdf

Form 2:

www.uscourts.gov/sites/default/files/ao399.pdf



Once you have completed those two forms, you can mail them to each defendant with a copy of the complaint and any of its attachments. If the defendant completes the form and either you or the defendant returns it to the court, you do not have to complete personal service of process.

- **Service by U.S. Marshal.** If the court allows you to proceed in forma pauperis and waives the filing fee, and if the court further finds your complaint is not subject to dismissal (for example, because it is frivolous or the person being sued is immune from liability), the court will direct the U.S. Marshal to complete service of process at no cost to you. But note that for each defendant, you still must provide a completed summons and a copy of complaint to the clerk's office for forwarding to the U.S. Marshal.

