

2.10 | SERVICE OF PROCESS IN FEDERAL COURT

Service of process is the actual delivery of the summons and complaint to the defendant in your case. Service of process in federal court is governed by Rule 4 of the Federal Rules of Civil Procedure. You are responsible for having a summons and a copy of the complaint "served" upon each party to the lawsuit, and for returning proof of the service to the Court. The summons and complaint must be served within 90 days of filing the complaint or the case may be dismissed. A party who cannot complete service within 90 days must file a motion with the Clerk's Office asking the Court to extend the time to serve the summons and complaint.

See Motions, pp. 11-14.

Anyone who is over 18 years old and is not a party to the action may serve the summons and complaint. If the Court has granted you permission to proceed in forma pauperis, the United States Marshal will serve process at no charge. Parties who have not been granted in forma pauperis status must make arrangements for service at their own expense (or request the defendant to waive service -- see below Waiver of Service of Summons and Complaint). Professional process servers are listed in the telephone directory yellow pages and will serve a summons and complaint for a fee. Any other person who is at least 18 years of age and who is not a party to the lawsuit, such as an employee, family member or friend, may serve the summons and complaint, but they must be careful to follow the service procedures exactly or the case may be dismissed for improper service. The United States Marshal can also serve process on behalf of a party who has not been granted permission to proceed in forma pauperis, but the party must first request (file a motion) and obtain an order of the Court directing service by the Marshal (forms for doing so may be obtained in person from the intake clerk of the Clerk's Office, by mail from the Pro Se Office, and from the Western District Court web site at <<http://www.nywd.uscourts.gov>>). There is a small fee (\$8.00) per complaint served for this service.

If the Marshal fails to complete service upon the first attempt, it is your responsibility to require the Marshal to try to serve again, or to move the Court for an order directing the Marshal to make a second attempt.

The procedures for serving process differ depending on whether the defendant is an individual within the United States (including territories), in a foreign country, under the age of 18 or



incompetent, or is a corporation, the United States (or a government agency), or a foreign, state or local government. See Federal Rules of Civil Procedure, Rule 4(e) - (j). It is important to follow the rules for service on these different persons and entities to the letter. The methods of serving process upon individuals within the United States and its territories are contained in Federal Rule of Civil Procedure 4(e) and in state law.

*(US District Court, New York, Western District // Buffalo, NY 14202
Pro Se Litigation Guidelines)*

