



## Service of Process in Prisoner Cases

Please read the information provided below carefully.

### 1. What do I do after I file the complaint?

If you filed an Application to Proceed in District Court without Prepaying Fees or Costs (also called an IFP application) and it is granted, the Clerk's Office will automatically prepare and issue a summons. The defendants will then be served the summons and complaint by a United States Marshal at no cost to you. However, a U.S. Marshal will serve only those defendants for whom you have submitted a properly completed marshal service form. You must submit one properly completed marshal service form for each defendant to be served. U.S. Marshal service forms are available from the Clerk's Office.

If you did not file an Application to Proceed in District Court without Prepaying Fees or Costs, or if you filed the application but it was denied, (and your case survived summary review) you must arrange on your own to have a *copy* of the summons and complaint served on each defendant. You can get a Summons in a Civil Action form by request to the Clerk's Office. When you complete it, send it to the Clerk's Office to have it signed and sealed by a Deputy Clerk. You should keep the original summons that has been signed and sealed and file it with the Clerk's Office, along with a proof of service for each defendant. The Proof of Service form is attached to the Summons in a Civil Action form. Your lawsuit will not proceed until you serve copies of the summons and complaint on each named defendant.

### 2. When must the summons and complaint be served?

A plaintiff has 90 days from the date the complaint was filed to serve a copy of the summons and the complaint. See Federal Rule of Civil Procedure 4(m).

### 3. Who can serve the summons and complaint?

Most litigants hire a professional process server to serve the summons and complaint on each defendant, but it is not necessary to hire a professional. Any person who is at least 18-years-old and not a party to the lawsuit may serve a summons and complaint. See [Federal Rule of Civil Procedure 4\(c\)\(2\)](#) for more information.

### 4. Do I have to hand-deliver the summons and complaint?

In most instances, you will have to arrange to have the summons and complaint hand-delivered to each defendant. This can be avoided by asking each defendant to accept



service by mail instead. To do this, you send each defendant a “Notice of Lawsuit and Request to Waive Service of a Summons” form, in the manner described below. This form is available from the Clerk's Office by request if your case has survived summary review [Federal Rule of Civil Procedure 4\(d\)](#) sets forth the requirements for requesting a waiver of service. Generally, to send the Notice of Lawsuit and Request to Waive Service of a Summons form to the defendant(s), do the following:

1. Complete the Notice of Lawsuit and Request to Waive Service form, specifying a due date on the form.  
You must give the defendant a reasonable amount of time to return the waiver of service to you, which must be at least 30 days from the date the request is sent (or 60 days if the defendant is outside the United States).
2. Provide a copy of the summons and complaint;
3. Provide an extra copy of the Notice of Lawsuit and Request to Waive Service of a Summons form;
4. Include a self-addressed, stamped envelope with sufficient postage to return the waiver of service to you; and
5. Deliver all of the above by first-class mail or other reliable means.

If a defendant returns the signed waiver of service to you, service on that defendant is complete. However, you must file the defendant's signed waiver of service with the Clerk's Office. Be sure to save a copy for your own files. Any defendant who does not return the waiver of service form must be served by the appropriate method, usually hand-delivery, described in Federal Rule of Civil Procedure 4.

**The following types of defendants, however, may *not* waive personal service and must be served by the other methods described in Federal Rule of Civil Procedure 4:**

1. A minor or incompetent person in the United States;
2. The United States government, its agencies, corporations, officers or employees;  
or
3. A foreign state or local government.

## **5. What is the proper way to serve the summons and complaint if the defendants do not waive personal service?**

There are different requirements for serving the summons and complaint on individuals, businesses, and government entities or officials. You must determine the proper way to serve each defendant with a copy of the summons and complaint. The proper methods of service are found in Federal Rule of Civil Procedure 4. You may also wish to consult Chapter Two of the [Pro Se Civil Guidebook](#) for an explanation of how to serve particular types of defendants.



**6. How do I prove that a defendant was served?**

Unless a defendant waives personal service and accepts service by mail, you must file a proof of service with the Court. The person who performed the service of process must complete and sign a proof of service form. Proof of service forms are available by request to the Clerk's Office. See [Federal Rule of Civil Procedure 4\(l\)](#) for more information.

**7. What do I do after a defendant is served?**

When each defendant has been served, submit the original summons along with the proofs of service to the Clerk's Office for filing.