



SERVICE OF PROCESS IN PRISONER CIVIL RIGHTS CASES

If the Court allowed your case to proceed past the initial screening required by 28 U.S.C. § 1915A, you are required to let the remaining defendants know you have filed a case against them in federal court. The way you notify the defendants is through service of process.

It is important to know that the rules for serving a complaint for plaintiffs who paid the filing fee up front and for plaintiffs who are proceeding without prepaying fees or costs (also called proceeding in forma pauperis) are different. These rules are complicated, so please read the information provided below carefully.

1. What if the Court granted my Application to Proceed in District Court Without Prepaying Fees or Costs (also called an application to proceed in forma pauperis)?

The Court will direct the United States Marshal Service to serve your complaint on the defendants against whom the action proceeds—at no cost to you.

However, a U.S. Marshal will serve only those defendants for whom you have submitted two properly completed forms: “Process Receipt and Return” (AO 285) and “Summons in a Civil Action” (AO 440). These forms are available from the Clerk’s Office and are often referred to as “a service packet.”

It is your responsibility to make sure that all of the defendants have been served. The most common reason service is not done properly is that the plaintiff has not provided the correct address for a defendant. You may contact the Clerk’s Office to check on the status of service.

2. What if I did not file an Application to Proceed in District Court Without Prepaying Fees or Costs (also called an application to proceed in forma pauperis), or the Court denied my Application to Proceed in District Court Without Prepaying Fees or Costs and I paid the full civil filing fee up front?

It is your responsibility to serve the remaining defendants. You have two options.

Option 1: You can serve your complaint and a summons on each defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

You must get a form titled “Summons in a Civil Action” (AO 440) from the Clerk’s Office for each defendant. The summons is a document that demands the defendant to respond to the complaint.

When you complete a summons form for each defendant, mail your summons (or, if more than one defendant, summonses) to the Clerk for issuance. Include a self-addressed, stamped envelope so the Court can return the issued summons(es) to you.

If you completed your summons(es) properly, the Clerk will sign, seal, and issue the summons(es) to you. For each defendant, the Clerk will keep a copy and return two copies to you.



It is now your responsibility as a fee-paying plaintiff to serve the defendant. Rule 4 of the Federal Rules of Civil Procedure states that the complaint must be served within 90 days after filing or the Court can dismiss your lawsuit. The rule describes different ways to serve a complaint. The requirements differ based on whether the defendant is a person, a company, a government agency, etc., and where the defendant is located.

Some litigants hire a professional process server to serve the summons and complaint on each defendant, but you are not required 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. Read Federal Rule of Civil Procedure 4(c)(2) for more information.

You need to serve your complaint and a summons on each defendant. Keep your other copy of the summons until service is complete. Once service is complete, fill out the second page of the summons, the Proof of Service, and file it with the Court.

Option 2: You can ask each defendant to waive service in person and accept service by mail.

Instead of arranging for service in person of the summons and the complaint, you may choose to seek a waiver of service from the defendant(s).

Waiving service means agreeing to give up the right to service in person and instead accepting service by mail. If a defendant waives service, you will not have to go to the trouble and/or expense of serving that defendant.

To request a waiver of service from a defendant, you need two forms:

- (1) Notice of a Lawsuit and Request to Waive Service of A Summons form (AO 398); and
- (2) Waiver of the Service of Summons form (AO 399).

These forms are available from the Clerk's Office or on the Court's website.

To request a waiver of service, complete and send the two forms listed above to the defendant by first class mail along with a copy of the complaint, an extra copy of the Notice of a Lawsuit and Request to Waive Service form, and a self-addressed, stamped envelope.

If the defendant agrees to waive service, you need the defendant to sign and send back to you the Waiver of the Service of Summons form, which you then file with the Court. See Rule 4(c) and (d) of the Federal Rules of Civil Procedure.

In choosing a due date on the form, you must give the defendant a reasonable amount of time to return the waiver of service—at least 30 days from the date you send the request (or 60 days if the defendant is outside the United States).



If the defendant sends you back the signed waiver of service, service on that defendant is complete. You do not need to do anything else to serve that defendant. Just file the defendant's signed waiver of service form with the Court and be sure to save a copy for your files.

You can ask for a waiver of service from any defendant except:

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

What if I requested a waiver of service and the defendant doesn't send it back?

If a defendant located within the United States 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 Rule 4 of the Federal Rules of Civil Procedure. You may ask the Court to order the defendant to pay the costs you incurred in serving that defendant.