

SERVICE OF SUMMONS AND COMPLAINT¹

What does service mean?

You are required to let the defendant(s) know that you have filed a case against them in federal court. Once you have paid the filing fee or the judge has granted your Application to Proceed *In Forma Pauperis* (IFP), you may request that the Clerk's Office issue summons to each defendant listed on your complaint. The Clerk's Office will return the stamped summons form to you for execution of service on the defendant(s).

It is your responsibility to ensure that each defendant receives a copy of the certified summons form, a copy of your complaint, and any other documents. This process is called "**service**" or "**serving the defendant.**" The only exception to this requirement is if you are appealing the denial of Social Security benefits under 42 U.S.C. § 405(g), pursuant to Rule 3 of the Supplemental Rules for Social Security Decisions under 42 U.S.C. § 405(g), the Court will notify the Commissioner of the suit and you need not serve a summons and complaint.

The rules for serving the original complaint are different from the rules for serving other papers. If the complaint is not properly served on the defendants your case may be dismissed. **The requirements for serving the complaint are established in FRCP 4.**

How should summons be presented?

Once the filing fee has been paid or the court grants your Application to Proceed *In Forma Pauperis* (IFP), you may submit completed summons forms to the Clerk's Office for signature and application of the court seal. Summons must be presented on the court's form to be issued and can be found at the end of this packet (Form 1) or on the court's website at www.okwd.uscourts.gov/forms.

Additionally, you must provide a Pro Se Litigants Request for Issuance of Summons form (Form 2)

¹ The information in this packet does not constitute legal authority, does not restrict the Court's rulings, and should not be used as a substitute for the advice of an attorney.

Who must be served?

Every defendant named in your complaint must be served. The Clerk's Office can only issue summons for parties named as defendants on the complaint.

Who is responsible for service?

You are solely responsible for arranging to have the **issued** summons, complaint, and supporting documents served on the defendants within the timeframe allowed by FRCP 4(m).

If a motion to Proceed In Forma Pauperis is granted, the judge may order that the U.S. Marshals Service serve the summons and complaint on your behalf. However, a court order is necessary to obtain service of process by the U.S. Marshal or by a person specially appointed by the court as set forth in Federal Rule of Civil Procedure 4(c).

If you are requesting that the U.S. Marshals serve your summons and complaint you **MUST** Provide the following:

- 1 Copy of the Order granting *In Forma Pauperis* status
- 1 Form USM-285 **for each defendant** (form 3)²
- 1 copy of the complaint **for each defendant**
- 2 copies of the summons **for each** defendant
- 1 copy of the Order Requiring Special Report (if plaintiff is an inmate)

How does the court know when summons have been served?

The person who serves the summons and complaint must complete the Proof of Service section on the back of the summons form, as established by FRCP 4(l). The original must then be filed with the court.

² The Marshals Service cannot complete service on a Post Office Box. Please provide a street address on the USM-285. Additionally, the USMS cannot serve process on John or Jane Doe Defendants.

Waiving Service:³

As an alternative to service of process, under Federal Rule of Civil Procedure 4(d), a plaintiff may request that a defendant waive service. Waiving service means that the defendant agrees to waive service of a summons. If a defendant waives services, the plaintiff will not have to go to the trouble and/or expense of serving that defendant.

To request a waiver from a defendant, you need to follow the requirements set forth in Rule 4(d). Forms relevant to waiver, including (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) are available from the Court Clerk's Office or on the Court's website, www.okwd.uscourts.gov/forms.

Generally, the plaintiff sends a copy of the complaint and a Notice of Lawsuit and Request For Waiver to a defendant. The defendant signs the waiver of service and returns it to the plaintiff. Plaintiff then files the waiver with the Clerk's Office and the defendant must file an answer within the time limit provided by Federal Rule of Civil Procedure 4(d)(3).

³The United States is not covered by the Waiver of Service provisions.

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)

v.

Defendant(s)

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Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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)	
)	
)	
)	Case No. _____
)	
)	
)	
)	
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TO THE CLERK OF SAID COURT: Please issue summons in this case for the persons listed below.

Name of Defendant(s)	Service Agent (if any)	Address for Service	Type of Service

City & State _____ Zip Code _____

PLAINTIFF	COURT CASE NUMBER
DEFENDANT	TYPE OF PROCESS

**SERVE
AT**

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN

ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW	Number of process to be served with this Form 285
	Number of parties to be served in this case
	Check for service on U.S.A.

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (*Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available for Service*):

Signature of Attorney other Originator requesting service on behalf of:

☐ PLAINTIFF
☐ DEFENDANT

TELEPHONE NUMBER

DATE

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. (Sign only for USM 285 if more than one USM 285 is submitted)	Total Process _____	District of Origin No. _____	District to Serve No. _____	Signature of Authorized USMS Deputy or Clerk	Date
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I hereby certify and return that I ☐ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above on the on the individual, company, corporation, etc. shown at the address inserted below.

☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc. named above (*See remarks below*)

Name and title of individual served (<i>if not shown above</i>)	Date	Time <input type="checkbox"/> am <input type="checkbox"/> pm
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Address (<i>complete only different than shown above</i>)	Signature of U.S. Marshal or Deputy
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Service Fee	Total Mileage Charges (including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal* or (Amount of Refund*)
_____	_____	_____	_____	_____	_____

REMARKS