

SERVICE OF SUMMONS AND COMPLAINT

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 Without Prepaying Fees or Costs, you may request the Clerk's Office issue summons to each defendant listed on your complaint. The original summons form will then be returned 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 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 not proceed. **The requirements for serving the complaint are established in FRCP 4.**

When must service be done?

The defendant(s) must be served within 90 days after the complaint has been filed, as established by FRCP 4(m). However, this does not apply to service in a foreign country as established by FRCP 4(f) or FRCP 4(j)(1), or personal service of the notice as established by FRCP 71.1(d)(3)(A). If you have questions about service, please contact an attorney as the Clerk's Office cannot provide legal advice about service.

How should summons be presented?

Once the filing fee has been paid or the court grants your Application to Proceed Without Prepaying Fees or Costs, you may submit completed summons forms to the Clerk's Office for signature and application of the court seal, as established by FRCP 4(b). Summons must be presented on the court's form which can be found at the end of this packet ([Sample 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 ([Sample 5](#)).

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 in the complaint.

Who serves the documents?

You are solely responsible for arranging to have the **issued** summons, complaint, and supporting documents served to the defendants within the time frame allowed by FRCP 4(m). You are also responsible for providing the person executing service (who must be over the age of 18 and not a party to the case) with copies of the documents that were filed with the court.

If an Application to Proceed to Proceed without Prepaying Fees or Costs is granted, the judge may order 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. Marshals, as established by FRCP 4(c).

If you are requesting the U.S. Marshals Service to serve your complaint with a Notice of a Lawsuit and Request to Waive Service of a Summons, you **MUST** Provide the following **per defendant**

- **3 copies of the issued summons ([Sample 1](#)) or Notice of a Lawsuit and Request to Waive Service of a Summons ([Sample 2](#)), and Waiver of the Service of Summons forms for service ([Sample 3](#)).**
- **3 U.S. Marshal's Return Form USM-285 per defendant ([Sample 4](#)).**
- **2 copies of the complaint for each defendant.**

How does the court know when summons have been served?

The person who serves the issued 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.

Waiving Service:

Generally, a plaintiff will send a notice of commencement of the action and a request for waiver to the defendant (See [Sample 2](#)). The defendant signs the waiver of service and returns it to the plaintiff. When the waiver is filed with the Clerk's Office, the action proceeds as if service of summons and complaint had been made.

A defendant within the United States who waives service has 60 days from the date the request was sent to answer the complaint. A defendant outside the United States has 90 days to answer.

Rule 4(d)(2) requires that the Notice of Lawsuit ([Sample 2](#)):

1. Be in writing and addressed to defendant (or to the proper representative if defendant is not an individual);
2. Identify the court in which the action has been filed;
3. Inform the defendant of the consequences of compliance and failure to comply;

4. Set forth the date on which the request is sent; and
5. Allow the defendant a reasonable amount of time to return the waiver (at least 30 days from the date on which the Notice was sent).

To request a waiver, the plaintiff must send, through first class mail or other reliable means, the following four items to the defendant:

1. Notice of Lawsuit and Request to Waive Service of Summons;
2. A copy of the complaint with identification of the court in which it was filed;
3. Waiver of Service of Summons and an extra copy of this form;
4. A prepaid means of compliance with the request in writing (e.g. a self-addressed and stamped envelope).

The plaintiff will file the completed Waiver of Service ([Sample 3](#)). Under Rule 4(d)(4), that filing date is equivalent to the date of service of summons and complaint.

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

UNITED STATES DISTRICT COURT

for the

Western District of Oklahoma

)	
<i>Plaintiff(s)</i>)	
v.)	Civil Action No.
)	
)	
)	
<i>Defendant(s)</i>)	

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 \$ 0.00.

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:

Print

Save As...

Reset

UNITED STATES DISTRICT COURT

for the

Western District of Oklahoma

Plaintiff v. Defendant Civil Action No.

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: (Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within ___ days (give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date:

Signature of the attorney or unrepresented party

UNITED STATES DISTRICT COURT

for the
Western District of Oklahoma

)	
<i>Plaintiff</i>)	
v.)	Civil Action No.
<i>Defendant</i>)	

WAIVER OF THE SERVICE OF SUMMONS

To: _____
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from _____, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

“Good cause” does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

PROCESS RECEIPT AND RETURNSee "[Instructions for Service of Process by U.S. Marshal](#)"

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:	<input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER	DATE
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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
Address (<i>complete only different than shown above</i>)	Signature of U.S. Marshal or Deputy	

Service Fee _____	Total Mileage Charges (including endeavors) _____	Forwarding Fee _____	Total Charges _____	Advance Deposits _____	Amount owed to U.S. Marshal* or (Amount of Refund*) _____
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REMARKS

INSTRUCTIONS FOR COMPLETING USM-285, PROCESS RECEIPT AND RETURN

- The Form USM-285 is a five-copy form set designed as a control document for process served by a U.S. Marshal or designee. Process may include, but is not limited to, a summons and complaint, subpoena, writ, or court order. The United States Marshals Service (USMS) is authorized by law (28 U.S.C. §921) to charge fees for the service of process. The amount of fees charged is established by regulation (28 C.F.R. 0.11 §). Except in cases where the litigant has been granted permission by the court for waiver of prepayment of fees and costs, the USMS must request advance payment of the estimated fees and expenses for service of process.
- Please type or print legibly. Submit one copy of the Form USM-285 and one copy of each process for each individual, company, corporation, government agency, etc., to be served or property to be seized.
- In cases where the court has directed the USMS to effect service of a summons and complaint upon an officer or agent of the United States Government, submit a copy of the summons and complaint and Form USM-285 for each officer or agent upon whom service is desired. Submit two (2) additional copies of the summons and complaint for service upon the Government of the United States. The U.S. Marshal or designee will serve one copy upon the U.S. Attorney and will forward the other copy to the Attorney General of the United States. (When the applicable box is checked, completion of the final signature block by the U.S. Marshal or designee certifies service on the U.S. Attorney and the U.S. Attorney General, regardless of whether other defendants on the summons were served). Failure to provide sufficient copies will delay service of the summons.
- Mark all applicable check boxes and use the "Special Instructions" to advise of any information that will assist the USMS in expediting service. You are responsible for providing accurate and sufficient information that will identify the individual or entity to be served or the property to be seized.
- If more than one item of process and Form USM-285 is submitted on a single case, the U.S. Marshal or designee will receipt for all of them on the first Form USM-285. You will receive for your records the "Acknowledgment of Receipt" copy for all the USM-285 forms you submit. When the process is served, you will receive the "Notice of Service" copy. This copy will be identical to the return to the Clerk of the U.S. District Court.
- Upon completion of all services, you will receive a "Billing Statement" copy of Form USM-285. You should return this "Billing Statement" copy to the USMS, together with your payment, in the form of a certified or bank check payable to the U.S. Marshal, for any amounts still owed. Alternatively, the USMS will accept cash. The USMS will not accept personal checks.
- Additional USM-285 forms may be obtained, without cost, from the Clerk of the U.S. District Court, U.S. Marshal, or printed from http://www.usmarshals.gov/process/usm_285.pdf.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

vs. Plaintiff(s)) Case No. _____

Defendant(s))

PRO SE LITIGANT’S REQUEST FOR ISSUANCE OF SUMMONS
(Required by LCvR 3.1)

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

Name of Plaintiff (Please Type or Print)

Signature (Plaintiff)

Telephone No.

Street or Mailing Address

City & State Zip Code