United States District Court
Northern District of New York

SERVICE OF PROCESS IN CASES WHERE THE FILING FEE HAS BEEN PAID

This guide is intended to be a summary of basic procedures for serving the summons, complaint, and General Order 25 (if applicable). The statements in this guide do not constitute legal advice and may not be cited as legal authority. This guide does not take the place of the Federal Rules of Civil Procedure or this court's Local Rules. Parties using this guide remain responsible for complying with all applicable rules of procedure.

Service of the Summons

What is a summons?

- A summons is a document notifying a defendant that they are required to participate in a court proceeding.

What is service?

- "Service" is the type of process a plaintiff utilizes to notify the defendant that they have been named in a complaint and that she is required to appear in court.
- ***A case cannot proceed until service is complete.***
- The procedures for serving the summons and complaint are described in Rule 4 of the Federal Rules of Civil Procedure ("FRCP").

How is service completed? FRCP 4(e)

- A process server (not the plaintiff) may:
  - deliver a copy of the summons, complaint and General Order 25 (if applicable) personally to defendant(s);
  - leave copies at the defendant's dwelling with a person over the age of 18 who currently is residing at the defendant's dwelling; or
  - deliver copies to an agent authorized by appointment or by law to receive service of process.
  - following NYS state law for serving a summons in an action brought in court of general jurisdiction in New York State. See N.Y. Civil Practice Law & Rules §308.
  - For more information about appropriate process servers, see page 3.

- Before attempting in-person service, the plaintiff may consider asking the defendant – whether an individual or a corporation – to accept informal service by mail. This avoids the time and money required of in person service. This is referred to as a "Waiver of Service."

Waiver of Service – FRCP 4(d)

What is a "Waiver of Service"?

- The plaintiff may ask the defendant to accept service of the summons and complaint by mail. This option offers defendants the option of waiving in-person service; and in return, the defendant will have 60 days to answer the complaint instead of the 21 days as outlined in FRCP 12.

- Form: Waiver of Services of Summons found on the Court's website.
    - Complete the caption, case number, to whom it is being sent, and the date it was mailed (in paragraph 4). Leave the bottom blank.

What is the procedure for waiver of service?

- To serve under the waiver of service provision, you must mail to the defendant's address:
    - a copy of the complaint;
    - two (2) copies of the waiver of service form;
    - General Order 25 (if applicable); and
    - a return, self-addressed, postage-paid envelope.

- **Service occurs only if the defendant signs and returns the waiver of service form**.

- *The waiver signed by defendant must be filed promptly with the Clerk's Office.*

- If you have not received this signed waiver form from the defendant within thirty (30) days after the date of mailing to the defendant, then you must serve the defendant by one of the other allowed methods in FRCP 4(e).
    - If the defendant is served outside of the United States, the rule allows the defendant sixty (60) days after the date of mailing to return the signed waiver form.

Issuance of a summons

How do I request a summons?

- At the time of filing your complaint, either in person, by mail or electronically via MFT, you are required to provide a proposed summons for each defendant.

    - If you pay the filing fee, use the form for the summons found at Summons - Filing Fee paid.
    - If you file an Application to Proceed In Forma Pauperis requesting waiver of the filing fee, use the form for the summons found at Summons - IFP.
    - Complete the caption, case number, defendant's name and address, and your name and address where the defendant will serve you with documents filed in your case. Leave the bottom and page 2 blank.
    - You will be required to make copies of the summons, one for each defendant, for service. The person who serves each defendant, known as the "process server" (see below for more detailed information), will serve each defendant with a copy of the summons, not the original, and all other appropriate documents.

- **Failure to provide proposed summons**: If you fail to provide a proposed summons, the Clerk's office will issue a text notice directing you to provide a proposed summons for each defendant with a deadline to comply.

If I amend my complaint, do I need a new summons?

- Maybe. If you add new defendants, a new summons must be issued. You must provide a proposed summons for each new defendant you add to an amended complaint.

Process Server

Who is allowed to be a process server?

- Any person who is 18 or older and not a plaintiff or defendant in the lawsuit may serve the summons and complaint. FRCP 4(c)(2). Any family member or friend who is not a party to the lawsuit may serve the summons and complaint.

- If you do not have a person to serve on your behalf, you will need to hire a professional process server. This guide refers to the person entrusted with service in your case, whether someone you know or a professional, as a "process server."

When should I initiate service on the defendant through the process server?

- Pursuant to General Order 25, the process server has 60 days from the date the summons is issued to serve the defendant. You should not wait until the end of the 60-day time period to find a process server and serve the defendant; instead, you should start the process as soon as you receive the summons.

- Pursuant to FRCP 4(m), if a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Extensions of Time – FRCP 4(m)

What is an expired summons?

- If 90 days have passed, from the date on the summons, the summons is "expired." If there is a defendant who has not been served, you will need to ask the assigned judge for an extension of time for service and request a new summons.

How do I ask for an extension of time to serve?

- To request an extension of time to serve, you must contact the court by filing a letter, addressed to the magistrate judge assigned to your case, requesting an extension of time to serve the defendant. In your letter, you should state the reasons why you need more time. The assigned judge has discretion to grant a request for more time if made for "good cause" and can set a new date by which the defendants must be served.

Proof of Service – FRCP 4(l)

What do I do after service has been completed?

- After service has been made, the process server must complete the Proof of Service section on the back of the original summons, or complete an Affidavit of Service of the Summons, Complaint and General Order 25 (if applicable).

What do I do with the original Proof of Service?

- Once the summons with proof of service (or affidavit of service) is completed, it must be filed promptly with the Court.

Other Types of Service Permitted – "Nail and Mail":

What if I cannot serve the defendant in person, at their home, or with an agent?

- New York State law authorizes the "nail and mail" method of service, which authorizes the process server, after attempting service with "due diligence," to (1) affix a copy of the summons and complaint to the door of the defendant's home or office; (2) mail a copy by first class mail to the defendant's home address; **and** (3) complete a proof of service, which must be filed with the court. N.Y. Civil Practice Law & Rules § 308(4). **All 3 steps must be completed.**

- **What is "Due Diligence":** A process server can show due diligence by making three attempts at service at different times of the day, and different days of the week.

- If the "nail and mail" method of service is unsuccessful, then you must request permission from the judge, by filing a motion, to effect service by an alternative method of service. N.Y. Civil Practice Law & Rules § 308(5)

Serving a Business – FRCP 4(h)

Where do I serve a business, corporation, or partnership?

- An officer or other person authorized by a company to receive process must be served personally. This person can be the president, vice president, or a person specifically designated by the company to receive process.
- In contrast, a receptionist or secretary may not be authorized by the company to accept service of process, even if that person receives other mail or packages.
- To determine who is authorized to accept service of process, the process server should call the company to ask who is authorized or designated to accept service of process for the company.
- The process server also may contact the New York State Department of State ("DOS"), Division of Corporations, for this information at (518) 473-2492. This information also is available on the New York Department of State's website dos.ny.gov/instructions-service-process.
- If the process server cannot serve a corporation with the address provided, service may be made on the New York Secretary of State in Albany, New York, if the corporation is incorporated or licensed to do business in New York State.

- This is done by hand delivering, not mailing, two copies of the papers to the Secretary of State's office located at One Commerce Plaza, 99 Washington Avenue, Albany, New York. The process server will still need a working address for the corporation.
- There is a fee for serving the Secretary of State on behalf of a corporation.
- Process Server will need to complete a Department of State Search and fill out the Service of Process Cover Sheet.
- Check the website at https://dos.ny.gov/instructions-service-process to determine if the Defendant has opted in to permit the New York Department of State to accept service electronically.

Serving Unknown Defendants – John and Jane Doe Defendants

If I do not know the name of the defendant, how do I have that person served?

- The Clerk's Office will not issue a summons for a John Doe, Jane Doe or Doe Corporation Defendant.
- You will need to do the research to determine the identity of the defendant, either through discovery or an investigator.
- Upon identifying the Doe defendant, you should request permission to amend the complaint or to substitute the parties to name the defendant.

Serving the United States, Federal Agencies, or Federal Employees – FRCP 4(i)

When the "United States" is a defendant, the following procedure must be followed:

- Provide a proposed summons for (1) United States Attorney for the Northern District of New York; (2) U.S. Attorney General at Washington, D.C.; and (3) if the action challenges a federal agency and/or officer of the United States, or federal employee, a proposed summons for each federal agency and/or federal officer or employee.

    - Hand deliver or send a copy of the summons, complaint and General Order 25 (if applicable) by registered or certified mail addressed to United States Attorney for the Northern District of New York; **AND**
    - Send a copy of the summons, complaint and General Order 25 (if applicable) by registered or certified mail to the Attorney General of the United States in Washington, D.C.; **AND**

- If the complaint challenges the validity of an officer or agency of the United States but that officer or agency is not named as a defendant, send a copy of the summons, complaint and General Order 25 (if applicable) by registered or certified mail to the officer or federal agency.

- A federal agency or federal officer sued in their ***official*** capacity, must be served by following this procedure:
  - Serve the United States in the same manner described above (i.e. on the U.S. Attorney, U.S. Attorney General, and Federal Agency) **AND**
  - Send a copy of the summons, complaint and General Order 25 (if applicable) by registered or certified mail to the officer, employee, agency, or corporation.

- A federal officer sued in their ***individual*** capacity – for conduct committed in connection with the performance of duties on behalf of the United States – the following procedure must be followed:
  - Serve the United States in the manner described above (i.e. U.S. Attorney, U.S. Attorney General, and Federal Agency), **AND**
  - Serve the officer or employee personally as outlined in FRCP 4(e).

Serving a State or Local Government – FRCP 4(j)

- Hand-deliver to the Chief Executive Officer of the government entity being sued.
- The attorney for the Defendant also may be served. For example, if the City of New York is sued, the New York City Law Department may be served with a summons.

Serving a Foreign Government or a Defendant in a Foreign Country – FRCP 4(j) and 4(f)

- Service on a foreign individual or business may be made pursuant to "any internationally agreed means of service." FRCP 4(f)(1).
- If the defendant resides in a country that is a signatory to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, then service by registered mail may be acceptable.
- If mail service is not successful, service on a designated "Central Authority" in the country where the defendant is located may be required.
- A list of signatory countries is widely available on the internet.

Serving a Minor or Incompetent Defendant

- **Serving a Minor (under 14).** The minor's parent, guardian, custodian, or adult spouse must be served personally as set forth on page 1.

- **Serving a Minor (under 18).** If the minor is at least 14 years old, the minor's parent, guardian, custodian, or adult spouse must be served **AND** the minor also must be served personally. N.Y. Civil Practice Law & Rules § 309(a).

Service of All Other Documents

What type of service is required after the summons has been served? FRCP 5

- If the defendant is represented by an attorney, no service is required for documents filed electronically on the Court's electronic case filing system. The attorney for the defendant will receive the document electronically on ECF.
- For defendants representing themselves pro se, you must serve all documents filed in your case on a pro se defendant either in person or by regular mail, unless that pro se defendant agrees to accept service via email.
- Defendant's counsel must provide you with a hard copy of the defendant's submissions, either by regular mail or email (if you agree), if you do **not** have electronic filing privileges on CM/ECF.

Can I email the defendant's attorney my discovery?

- Only if you and the defendant's attorney agreed to serve discovery by email.

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