

Proposed Amendments to Rule 4

Rule 4 is amended as follows:

Rule 4. Service of Summons and Complaint

(a) Summons; Service by the Clerk.

In any action required to be commenced by filing a summons only, service of the summons ~~shall~~**must** be made by the clerk of the court as follows:

(1) ~~Upon~~**On** the United States, by serving the Attorney General of the United States, by delivering or by mailing a copy of the summons to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice.

(2) When the action is described in 28 U.S.C. § 1581(a) or (b), the clerk ~~shall~~**must**, in addition to the service prescribed in paragraph (1) of this subdivision (a), also serve the Secretary of the Treasury by mailing a copy of the summons to the director for the customs port in which the protest was denied or in which the liquidation of an entry is contested and to the Assistant Chief Counsel for International Trade Litigation, United States Customs ~~Service~~**and Border Protection.**

(3) When the action is described in 28 U.S.C. § 1581(b), the clerk ~~shall~~**must**, in addition to the service prescribed in paragraphs (1) and (2) of this subdivision (a), also mail a copy of the summons to the consignee or agent of the consignee involved in each entry included in the action.

(4) When the action is described in 28 U.S.C. § 1581(c) and contests a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930, the clerk

~~[shall]~~**must**, in addition to the service prescribed in paragraph (1) of this subdivision (a), also mail a copy of the summons: to the Secretary, United States International Trade Commission, when a determination of that Commission is contested; and to the General Counsel, Department of Commerce, when a determination of that Department is contested.

(5) After making service as prescribed in this subdivision (a), the clerk ~~[shall]~~**must** return a copy of the summons, together with proof of service and a receipt for payment of the filing fee, to the person who filed the summons.

(b) Summons and Complaint; Service by **the** Plaintiff.

(1) In General. In any action required to be commenced by the concurrent filing of a summons and complaint, the plaintiff ~~[shall]~~**must** cause service of the summons and complaint to be made in accordance with this rule.

~~(c) Service.~~

~~(1) Service of~~**(2) By Whom. Any person who is at least 18 years old and not a party may serve** a summons and complaint~~[may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, however, the court may direct].~~

(3) By a Marshal or Someone Specially Appointed. At the plaintiff's request, the court may order that service be ~~[effected]~~**made** by a United States marshal~~[,] or deputy [United States] marshal, or [other]~~**by a person [or officer] specially appointed by the court [for that purpose. Such an appointment].**
The court must ~~[be made when]~~**so order if** the plaintiff is authorized to proceed *in forma pauperis*~~[pursuant to]~~ **under** 28 U.S.C. § 1915.

~~(2) In an~~ **4) Pro Se Actions. If the plaintiff has failed to make service in a pro se** action commenced under 28 U.S.C. § 1581(d), the court ~~is authorized to~~ **may** serve the summons and complaint ~~[where the action was commenced pro se and the plaintiff has failed to make service].~~

~~(d) Waiver of Service; Duty to Save Costs of Service; Request to Waive:~~

~~(1) A defendant who waives service of a summons does not thereby waive any objection to the jurisdiction of the court over the person of the defendant.~~

~~(2)~~ **c) Waiving Service.**

(1) Requesting a Waiver. An individual, corporation, or association that is subject to service under ~~[subdivision (e), (f), or (h)]~~ and that receives notice of an action in the manner provided in this paragraph **Rule 4(d), (e), or (g)** has a duty to avoid unnecessary ~~[costs]~~ **expenses** of serving the summons. ~~[To avoid costs, the]~~ **The** plaintiff may notify such a defendant ~~[of the commencement of the action]~~ **that an action has been commenced** and request that the defendant waive service of a summons. The notice and request **must**:

(A) ~~[shall]~~ be in writing and ~~[shall]~~ be addressed ~~[directly to the defendant, if an Individual, or else to an officer or]~~:

(i) to the individual defendant; or

(ii) for a defendant subject to service under Rule 4(g), to an officer, a managing or general agent ~~[,]~~ **or any** other agent authorized by appointment or law to receive service of process ~~[of a defendant subject to service under subdivision (h)];~~

(B) ~~[shall be dispatched through first-class mail or other reliable means;~~

~~(C) shall]~~ **name the court where the complaint was filed;**

(C) be accompanied by a copy of the complaint, two copies of the waiver form, and a prepaid means for returning the form;

(D) ~~[shall]~~ inform the defendant, ~~[by means of a]~~ **using** text substantially in the form ~~[as set forth]~~ **prescribed** in Forms 1A and 1B of the Appendix of Forms, of the consequences of ~~[compliance and of a failure to comply with the request;~~

~~(E) shall set forth the date on which]~~ **waiving and not waiving service;**

(E) state the date when the request is sent;

(F) ~~[shall allow]~~ **give** the defendant a reasonable time ~~[to return the waiver, which shall be]~~ **of** at least 30 days from ~~[the date on which]~~ **after** the request ~~[is]~~ **was** sent~~[,]~~ – or **at least** 60 days ~~[from that date if]~~ **if sent to** the defendant~~[is addressed]~~ outside any judicial district of the United States~~;~~ and

~~(G) shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing.] – to return the waiver; and~~

(G) be sent by first-class mail or other reliable means.

(2) Failure to Waive. If a defendant located within the United States fails~~[to comply with a request for waiver made]~~, **without good cause, to sign**

and return a waiver requested by a plaintiff located within the United States, the court ~~[shall]~~**must** impose ~~[the costs subsequently incurred in effecting service]~~ on the defendant ~~[unless good cause for the failure be shown].~~

~~(3) A defendant that]:~~

(A) the expenses later incurred in making service; and

(B) the reasonable expenses, including attorney's fees, of any

motion required to collect those service expenses.

(3) Time to Answer After a Waiver. A defendant who, before being served with process, timely returns a waiver ~~[so requested is]~~**need** not ~~[required to]~~ serve an answer to the complaint until 60 days after the ~~[date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed]~~**request was sent – or until 90 days after it was sent to the defendant** outside any judicial district of the United States.

(4) Results of Filing a Waiver. When the plaintiff files a waiver, **proof** of service ~~[with the court, the action shall proceed, except as provided in paragraph (3),]~~**is not required and these rules apply** as if a summons and complaint had been served at the time of filing the waiver ~~[, and no proof of service shall be required].~~

~~(5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive].~~

(5) Jurisdiction and Venue Not Waived. Waiving service of a summons ~~[shall include the costs subsequently incurred in effecting service~~

~~under subdivision (e), (f), or (h), together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.~~

~~(e) Service upon Individuals~~ **does not waive any objection to personal jurisdiction or venue.**

(d) Serving an Individual Within a Judicial District of the United States.

Unless ~~[otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or]~~ **federal law provides otherwise, an individual – other than a minor, an incompetent person, or a person whose waiver has been filed –** may be ~~[effected]~~ **served** in ~~[any]~~ **a** judicial district of the United States~~;~~

~~(1) pursuant to the law of the state in which service is effected, for the service of a summons upon the defendant]~~ **by:**

(1) following state law for serving a summons in an action brought in~~]~~ the courts of general jurisdiction ~~[of]~~ **in** the state **where service is made;** or

(2) [by] **doing any of the following:**

(A) delivering a copy of the summons and complaint to the individual personally~~[or by]~~;

(B) leaving ~~[copies thereof]~~ **a copy of each** at the individual's dwelling~~[house]~~ or usual place of abode with ~~[some person]~~ **someone** of suitable age and discretion ~~[then residing therein]~~ **who resides there;** or~~]~~
by]

(C) delivering a copy of ~~the summons and of the complaint~~ **each** to an agent authorized by appointment or by law to receive service of process.

(~~f~~e) ~~Service upon Individuals~~ **Serving an Individual** in a Foreign Country.~~]~~

Unless ~~otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or~~ **federal law provides otherwise, an individual – other than a minor, an incompetent person, or a person whose waiver has been filed –** may be ~~effected in~~ **served at** a place not within any judicial district of the United States:

(1) by any internationally agreed means **of service that is** reasonably calculated to give notice, such as those ~~means~~ authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; ~~or~~

(2) if there is no internationally agreed means ~~of service~~, or ~~the applicable~~ **if an** international agreement allows **but does not specify** other means ~~of service~~, ~~provided~~ **by a method** that ~~service~~ is reasonably calculated to give notice:

(A) ~~in the manner~~ **as** prescribed by ~~the law of~~ the foreign ~~country~~ **country's law** for service in that country in an action in ~~any of~~ its courts of general jurisdiction; or

(B) as ~~directed by~~ the foreign authority **directs** in response to a letter rogatory or letter of request; or

(C) unless prohibited by the ~~law of the~~ foreign ~~country~~ **country's law**, by

(i) ~~delivery~~ **delivering a copy of the summons and of the complaint** to the individual personally ~~[of a copy of the summons and the complaint];~~ or

(ii) **using** any form of mail ~~[requiring]~~ **that the clerk addresses and sends to the individual and that requires** a signed receipt ~~[, to be addressed and dispatched by the clerk of the court to the party to be served];~~ or

(3) by other means not prohibited by international agreement, ~~as~~ **orders**.

~~(g)~~ **f) Serving a Minor or an Incompetent Person.**

~~[Service upon an infant]~~ **A minor** or an incompetent person in a judicial district of the United States ~~[shall be effected in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such]~~ **must be served by following state law for serving a summons or like process on such a** defendant in an action brought in the courts of general jurisdiction of ~~[that]~~ **the state** ~~[. Service upon an infant]~~ **where service is made. A minor** or an incompetent person ~~[in a place]~~ **who is** not within any judicial district of the United States ~~[shall]~~ **must** be ~~[effected]~~ **served** in the manner prescribed by ~~[paragraph (2)(A) or (2)(B) of subdivision (f) or by such means as the court may direct.~~

~~—— (h) Service upon Corporations and Associations.~~

~~Unless otherwise provided by federal law, service upon~~ **Rule 4(e)(2)(A), (e)(2)(B), or (e)(3).**

(g) Serving a Corporation, Partnership, or Association.

Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation or ~~upon~~ a partnership or other unincorporated association that is subject to suit under a common name, ~~and from which a waiver of service has not been obtained and filed, shall be effected~~ **must be served:**

(1) in a judicial district of the United States:

(A) in the manner prescribed **by Rule 4(d)(1)** for ~~individuals by subdivision (e)(1),~~ **serving an individual;** or

(B) by delivering a copy of the summons and the complaint to an officer, a managing or general agent, or ~~to~~ any other agent authorized by appointment or by law to receive service of process and ~~;~~ – if the agent is one authorized by statute ~~to receive service~~ and the statute so requires ~~;~~ – by also mailing a copy **of each** to the defendant; or

(2) ~~in~~ **at** a place not within any judicial district of the United States, in any manner prescribed **by Rule 4(e)** for ~~individuals by subdivision (f)~~ **serving an individual,** except personal delivery ~~as provided in paragraph~~ **under (e)(2)(C)(i)** ~~thereof~~.

~~(h)~~ ~~Service upon~~ **Serving** the United States ~~;~~ and its Agencies, Corporations, ~~for~~ **Officers, or Employees.**

(1) **United States.** ~~[Service upon the United States shall be effected by serving the Attorney General of the United States, by delivering or by mailing by registered or certified mail, return receipt requested,]].~~ **To serve the United States, a party must serve the Attorney General of the United States by:**

(A) delivering a copy of the summons and complaint to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice~~[-~~

~~(2) Service upon an officer or agency of the United States shall be effected by serving the United States, and by delivering or by mailing];~~ **or**

(B) sending a copy of each by registered or certified mail, return receipt requested, **to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice.**

(2) Agency; Corporation; Officer; or Employee. **To serve a United States agency or corporation, or United States officer or employee, a party must serve the United States and also send** a copy of the summons and complaint ~~[to such officer or agency. If the agency is a corporation, the copy shall be delivered as provided in subdivision (h).~~

~~(j) Service upon]~~ **by registered or certified mail, return receipt requested, to the agency, corporation, or officer or employee.**

(i) Serving a Foreign, State, or Local [Governments]Government.

(1) ~~[Service upon a]~~ **Foreign State.** A foreign state or ~~[a]~~ **its** political subdivision, agency, or instrumentality ~~[thereof shall]~~ **must** be ~~[effected pursuant to]~~ **served in accordance with** 28 U.S.C. § 1608.

(2) ~~[Service upon a]~~ **State or Local Government. A** state, **a** municipal corporation, or **any** other **state-created** governmental organization **that is** subject to suit ~~[shall]~~ **must** be ~~[effected]~~ **served** by:

(A) delivering a copy of the summons and of the complaint to its chief executive officer; ~~or [by]~~

(B) serving ~~[the summons and complaint]~~ **a copy of each** in the manner prescribed by ~~[the law of]~~ that ~~[state]~~ **state's law** for ~~[the service of]~~ **serving a** summons or ~~[other]~~ like process ~~[upon any]~~ **on** such **a** defendant.

~~(f)~~ Territorial Limits of Effective Service.

(1) ~~[Service of]~~ **In General. Serving** a summons or filing a waiver of service ~~[is effective to establish]~~ **establishes personal** jurisdiction over ~~[the person of]~~ a defendant:

(A) who ~~[could be subjected]~~ **is subject** to the jurisdiction of a court of general jurisdiction in the state ~~[in which]~~ **where** service is made; ~~or];~~

(B) who is a party joined under Rule 14 or 19 and is served ~~[at a place]~~ within a judicial district of the United States; ~~or~~

~~_____~~ (C) who is subject to the federal interpleader jurisdiction under 28 U.S.C. § 1335; ~~or~~

~~_____~~ (D) when; **or**

(C) when authorized by a ~~[statute of the United States].~~

~~(2) If the exercise of jurisdiction is consistent with the Constitution and laws of the United States]~~**federal statute.**

(2) Federal Claim Outside State-Court Jurisdiction. For a claim that arises under federal law, serving a summons or filing a waiver of service [is also effective, with respect to claims arising under federal law, to establish]**establishes** personal jurisdiction over [the person of any]**a** defendant [who]**if:**

(A) the defendant is not subject to [the]jurisdiction **in any** of the **state's** courts of general jurisdiction[of any state:

~~(l) Proof of Service:~~

~~If service is not waived, the person effecting service shall make proof thereof to the court. If service is made by a person other than];~~ **and**

(B) exercising jurisdiction is consistent with the United States Constitution and laws.

(k) Proving Service.

(1) Affidavit Required. Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy [United States marshal, the person shall make affidavit thereof. Proof of service in a place]**marshal, proof must be by the server's affidavit.**

(2) Service Outside the United States. Service not within any judicial district of the United States [shall, if effected under paragraph (1) of subdivision (f), be made pursuant to]**must be proved as follows:**

(A) if made under Rule 4(e)(1), as provided in the applicable treaty or convention, ~~[and shall,]or~~

(B) if ~~[effected]~~made under ~~[paragraph]~~**Rules 4(e)(2) or (e)(3)** thereof, ~~[include]~~**by** a receipt signed by the addressee, or **by** other evidence ~~[of delivery]~~**satisfying the court that the summons and complaint were delivered** to the addressee~~[satisfactory to the court].~~

(3) Validity of Service; Amending Proof. Failure to ~~[make proof of]~~**prove** service does not affect the validity of the service. The court may ~~[allow]~~**permit** proof of service to be amended.

~~(m)~~**(l)** Time Limit for Service.

If a ~~[service of the summons and complaint]~~**defendant** is not ~~[made upon a defendant]~~**served** within 120 days after the ~~[filing of the]~~complaint **is filed**, the court ~~[upon]~~**– on** motion or **on** its own~~[initiative]~~ after notice to the plaintiff~~[, shall]~~ **– must** dismiss the action without prejudice ~~[as to]~~**against** that defendant or ~~[direct]~~**order** that service be ~~[effected]~~**made** within a specified time~~[, provided that]~~. **But** if the plaintiff shows good cause for the failure, the court ~~[shall]~~**must** extend the time for service for an appropriate period. This subdivision **(l)** does not apply to service in a foreign country ~~[pursuant to subdivision]~~**under Rule 4**~~(f)~~**e** or **4**~~(g)~~**(i)(1)**.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 21, 1986, eff. Oct. 1, 1986; July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. April 1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; _____, **2008, eff.** _____, **2009**.)

Advisory Committee Note

The language of Rule 4 has been amended as part of the general restyling of these rules to make them more easily understood and to make style and terminology consistent throughout the rules. In addition to these changes, several other stylistic changes were made. Further, consistent with a change in the Federal Rules of Civil Procedure, Rule 4(j)(1)(C) is amended to remove the reference to federal interpleader jurisdiction, which is replaced by a broader reference to service “authorized by a federal statute.”