

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 must be made by the clerk of the court as follows:

(1) 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 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 and Border Protection.

(3) When the action is described in 28 U.S.C. § 1581(b), the clerk 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 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

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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 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 must cause service of the summons and complaint to be made in accordance with this rule.

(2) By Whom. Any person who is at least 18 years old and not a party may serve a summons and complaint.

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

(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 may serve the summons and complaint.

(c) Waiving Service.

(1) Requesting a Waiver. An individual, corporation, or association that is subject to service under Rule 4(d), (e), or (g) has a duty to avoid unnecessary

expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed:

(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;

(B) 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) inform the defendant, using text substantially in the form prescribed in Forms 1A and 1B of the Appendix of Forms, of the consequences of waiving and not waiving service;

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

(F) give the defendant a reasonable time of at least 30 days after the request was sent – or at least 60 days if sent to the defendant outside any judicial district of the United States – 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, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant

(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 need not serve an answer to the complaint until 60 days after the 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 is not required and these rules apply as if a summons and complaint had been served at the time of filing the waiver.

(5) Jurisdiction and Venue Not Waived. Waiving service of a summons does not waive any objection to personal jurisdiction or venue.

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

Unless federal law provides otherwise, an individual – other than a minor, an incompetent person, or a person whose waiver has been filed – may be served in a judicial district of the United States by:

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

(2) doing any of the following:

(A) delivering a copy of the summons and complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(e) Serving an Individual in a Foreign Country.

Unless federal law provides otherwise, an individual – other than a minor, an incompetent person, or a person whose waiver has been filed – may be 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 authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

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

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

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

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

(i) delivering a copy of the summons and of the complaint to the individual personally; or

- (ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or
- (3) by other means not prohibited by international agreement, as the court orders.

(f) Serving a Minor or an Incompetent Person.

A minor or an incompetent person in a judicial district of the United States 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 the state where service is made. A minor or an incompetent person who is not within any judicial district of the United States must be served in the manner prescribed by 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 a partnership or other unincorporated association that is subject to suit under a common name, must be served:

- (1) in a judicial district of the United States:
 - (A) in the manner prescribed by Rule 4(d)(1) for serving an individual;
 - or
 - (B) by delivering a copy of the summons and the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and – if the agent is one

authorized by statute and the statute so requires – by also mailing a copy of each to the defendant; or

(2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(e) for serving an individual, except personal delivery under (e)(2)(C)(i).

(h) Serving the United States and its Agencies, Corporations, Officers, or Employees.

(1) United States. 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; 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 by registered or certified mail, return receipt requested, to the agency, corporation, or officer or employee.

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

(1) Foreign State. A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. § 1608.

(2) State or Local Government. A state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by:

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

(B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on such a defendant.

(j) Territorial Limits of Effective Service.

(1) In General. Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where service is made;

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

(C) when authorized by a 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 establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any of the state's courts of general jurisdiction; 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 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 must be proved as follows:

(A) if made under Rule 4(e)(1), as provided in the applicable treaty or convention, or

(B) if made under Rules 4(e)(2) or (e)(3) by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

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

(l) Time Limit for Service.

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. This subdivision (l) does not apply to service in a foreign country under Rule 4(e), 4(g)(2), or 4(i)(1).

PRACTICE COMMENT: The clerk is authorized by Rule 4(a) to make service of the summons only in those actions commenced by a summons, i.e., actions described in 28 U.S.C. § 1581(a) or (b), and only those actions described in 28 U.S.C. § 1581(c) which contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930. In all other actions, including those actions described in 28 U.S.C. § 1581(c) which contest a determination listed in section 516A(a)(1) of the Tariff Act of 1930, the plaintiff is required by Rule 4(b) to effect concurrent service of the summons and complaint.

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