



United States District Court
Southern District of New York

Frequently Asked Questions: SERVICE OF THE COMPLAINT

These questions are intended to address common questions that arise around service of the complaint. The statements in this guide do not constitute legal advice and may not be cited as legal authority. This document does not take the place of the Federal Rules of Civil Procedure, this court's Local Civil Rules, or the individual rules of practice and orders of the judges of this court. Parties consulting this document remain responsible for complying with all applicable rules of procedure.

What does “service” of the complaint mean?

Service of the complaint means providing a copy of the complaint to the defendant. The person who serves the defendant cannot be a named party and must be over the age of 18. Therefore, the plaintiff cannot serve the defendant with a copy of the complaint. Rule 4 of the Federal Rules of Civil Procedure governs the requirements of service. Please review [Service of Process in *In Forma Pauperis* Cases](#) and [Service Guide in Pro Se Cases Where Fees Have Been Paid](#) for more information on service.

I have IFP status. When will I get my summons?

Before a summons is issued, the *in forma pauperis* (“IFP”) statute requires judges to screen cases where the fees have been waived to determine whether a case must be dismissed as frivolous or malicious, for failure to state a claim on which relief may be granted, or because the plaintiff seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). Further, at any time, the Court must dismiss any case if it determines it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3). If a judge determines that the case should not be dismissed at this early stage, then the Clerk’s Office will issue a summons for the named defendants. In some cases, a judge may dismiss some defendants under the IFP statute and order that a summons be issued for other defendants.

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I paid the filing fee. When will I get my summons?

If you pay the fees at the courthouse and provide the Clerk's Office with a request for a summons, you will receive a summons for each named defendant at the courthouse. If you pay the fees after you file your complaint, you must file a request for a summons, even if you filed a request before you paid the fees.

Who can serve my summons and complaint when I pay the filing fee?

Anyone over the age of 18 years who is not a party to the lawsuit can serve the summons and complaint. Professional process servers may be hired to serve the summons and complaint. Fees and costs vary with each server. A cost-savings alternative is to have a trusted family member or friend, who is over 18 years old, serve your summons and complaint. If you do not use a professional process server, you should carefully read Rule 4 of the Federal Rules of Civil Procedure to determine the method by which service must be made. Under certain circumstances, Rule 4 also permits service to be made under New York law. (If your application to waive the filing fee was granted and you have IFP status, the United States Marshal Service will serve your summons and complaint free of charge.)

What materials need to be provided to complete service?

The process server, or person you have arranged to serve the defendant, must provide the defendant with a copy of the summons and complaint. They should not serve the original summons or your original complaint.

Can the United States Marshal Service serve a John Doe Defendant?

No. In IFP cases, the United States Marshal Service will serve a defendant who is named in the caption of the lawsuit at the address provided by the plaintiff. The Marshals do not perform any investigation as to the identity or location of a defendant. Therefore, the Marshals cannot serve a defendant who is identified as "John Doe." The defendant must have an actual name. Judges can assist a pro se



litigant in identifying Doe Defendants by ordering counsel for an entity that employs the Doe Defendant to provide the name and address for such a defendant.

What do I do if I lose or have served the original summons?

If you lose the summons before a defendant has been served, you may ask the Clerk's Office to issue a new summons for each unserved defendant. If you lose the summons and all defendants have been served, you can file a document and title it "proof of service" and provide information regarding who served the defendant, where and when the service occurred, and who accepted service on behalf of the defendant. If the defendants are accidentally served with the original summons instead of a copy, and you no longer have a copy, you may request your own copy from the Clerk's Office. Requests for duplicate or reissued summons can be made by phone (212-805-0175) or by letter.