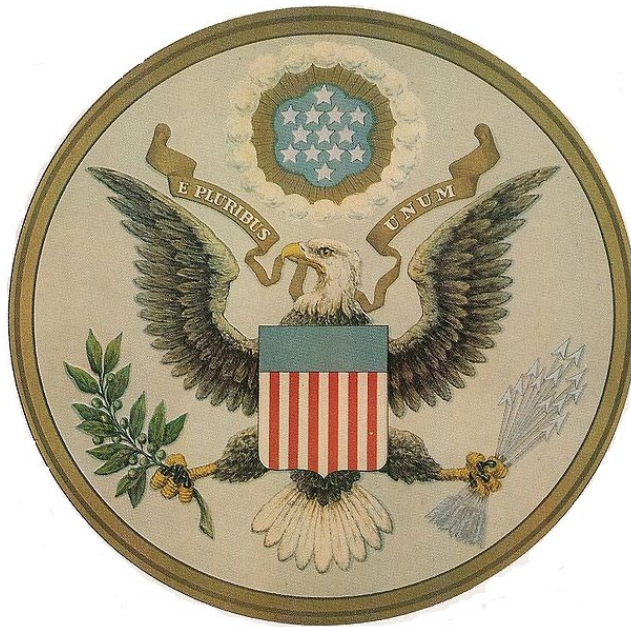


UNITED STATES DISTRICT COURT
DISTRICT OF MAINE



GUIDANCE CONCERNING SERVICE OF PROCESS

Christa K. Berry, Clerk of Court

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This information is intended as an informative and practical resource. It cannot take the place of an attorney's legal advice, nor will it answer all of your questions about what you need to do to serve a defendant or crossclaim defendant with process.

All parties facing legal action against them must be notified.

“Service of process” involves serving the defendant(s) with a copy of the complaint and is the procedure that officially notifies the defendant(s) that a lawsuit has been filed.

This section will explain:

- How to notify the defendant(s) that a lawsuit has been filed.
- When the court will assist with service.

- **Is there a time limit for serving the complaint?**

Yes. Federal Rule of Civil Procedure 4 establishes a time limit of 90 days following the filing of the complaint with the court for service to be made on the defendant(s). See [Rule 4 of the Federal Rules of Civil Procedure](#) for more information.

If you do not meet this deadline, the court may dismiss all claims against any party who has not been timely served.

- **Who is responsible for serving the complaint? Will the court assist me with making service?**

If...	Then...
You applied for leave to proceed without prepaying the filing fee and your application was granted	The Clerk’s Office will arrange for service of the complaint on the defendant(s). However, service may not be carried out right away because complaints filed by persons proceeding without prepayment of the filing fee are subject to a mandatory screening process (pursuant to 28 U.S.C. § 1915(e)(2)), and that process can delay service. Service will not proceed until the judge issues an Order for Service.

You have paid the filing fee	You are responsible for coordinating service of the complaint on the defendant(s). See Rule 4(c) Federal Rules of Civil Procedure for more information regarding service.
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- **I paid the filing fee and am therefore responsible for service. How do I go about serving the defendant(s)?**

A Summons is a form prepared by the plaintiff(s) and issued by the court that informs a defendant(s) that he/she is being sued and has a certain number of days to respond to the complaint. There are specific rules that must be followed as to who can serve a summons.

You may be able to serve the defendant(s) by waiver of service, but only if the defendant(s) agree.

It is critical that service of the complaint be made exactly the way the law requires. If the complaint is not served properly on the opposing party, it could be subject to dismissal by the court.

The below sections will explain how to request the defendant(s) to waive service and how to get a summons issued by the court.

WAIVER OF SERVICE

- **What is a waiver of service?**

A waiver of service of summons means that a party voluntarily enters a lawsuit without requiring the opposing party to officially serve them with a summons. Waiving service means agreeing to give up the right to service in person and instead accepting service by mail.

- **What are the benefits to waiving service?**

One benefit to the plaintiff(s) is avoiding the cost and/or inconvenience of having the summons served in person on the defendant(s).

One benefit to the defendant(s) is that they will have more time to answer the complaint. When service is made by summons, the answer is due within 21 days of service. However, when service is waived, the answer is due within 60 days from the date the waiver was sent to the opposing party.

- **Can I get the defendant(s) to waive service?**

You can ask for a waiver of service from any party ***except***

- A minor or incompetent person.
- The United States government, its agencies, corporations, officers, or employees.
- A foreign, state, or local government. See [Rule 4 of the Maine Rules of Civil Procedure](#).

- **How do I request that the defendant(s) waive service?**

To request waiver of service from the defendant(s), you will need two forms, which you can obtain from the Clerk's Office or download from the Court's website:

- [Notice of Lawsuit and Request to Waive Service of Summons](#) form, and
- [Waiver of Service of Summons](#) form.

To request a waiver of service, complete and send the above-listed two forms to the defendant(s) by first-class mail, along with a copy of the complaint and supporting documents filed with the court. See [Rule 4\(d\) of the Federal Rules of Civil Procedure](#) for more information regarding waiver of service.

Note:

When completing the Notice of Lawsuit and Request to Waive Service of Summons Form, you will need to input on the form a time frame for the defendant to return to you the signed waiver form (if he/she elects to agree to waive service).

When completing the Waiver of Service of Summons Form, you will need to input the date the waiver was sent. This is the date that you place your completed request to waive service paperwork in the mail to the defendant.

- **What do I do if a defendant agrees to waive service and sends me back the signed Waiver of Service of Summons Form?**

If you receive a signed waiver of service form, you do not need to do anything further to serve that defendant. Make a copy for your records and file the original waiver of service form with the Court.

- **What if I requested a waiver of service and the form was not sent back?**

If a defendant does not return a signed waiver of service form by the due date you will need to arrange to serve that defendant by one of the other means approved by Rule 4 of the Federal Rules of Civil Procedure.

SERVICE BY SUMMONS

- **How do I submit a summons to the Clerk's Office for Issuance?**

In order to serve the complaint, you must first get a Summons “issued” by the Clerk’s Office. The Clerk’s Office “issues” the summons by affixing the date and seal of the court. The form

entitled “Summons in a Civil Action” is available in paper form at the Clerk’s Office or electronically on the Court’s website [here](#).

Note: Before you can serve the summons, it must be issued by the Clerk’s Office. Before submitting the summons to the Clerk’s Office for issuance you must prepare the summons by completing the upper portion of the form (everything above the date and signature of the Clerk lines needs to be completed before the Clerk’s Office will issue the summons). If your complaint names more than one defendant, you must prepare a separate summons form for each defendant.

If...	Then...
You file in paper form (not registered for Electronic Case Filing (ECF))	Prepared summons(es) can be submitted to the court for issuance in paper form in person or by mail
You are registered for Electronic Case Filing (ECF)	Prepared summons(es) can be submitted to the court for issuance by email to newcases.bangor@med.uscourts.gov or newcases.portland@med.uscourts.gov or may be submitted to the court in paper form in person or by mail

The Clerk’s Office will not issue any summons(es) until the filing fee has been paid or until an Order for Service has been entered if you have been granted leave to proceed without prepayment of fees or costs.

- **Who can serve the summons?**

See [Rule 4\(c\)\(2\) of the Federal Rules of Civil Procedure](#) for information regarding who can make service of the summons.

- **What documents do I include with the Summons?**

You are required include a copy of your complaint and any supporting documents filed with the court.

SERVICE ON THE UNITED STATES, ITS AGENCIES, OFFICERS OR EMPLOYEES

- **How do I serve the United States, its agencies, officers or employees?**

Service can be made by Summons sent by certified mail (return receipt required). Service needs to be made upon the U.S. Attorney for the district where the action is brought; the Attorney General of the United States; and the agency, corporation, officer, or employee in accordance with Federal Rule of Civil Procedure 4(i).

- **What documents do I include when making service by certified mail upon the United States, its Agencies, Corporations, Officers, or Employees?**

You are required to serve a copy of a Summons that has been issued by the Clerk of Court, along with a copy of your complaint and any supporting documents filed with the court.

Note: A separate summons is required for each entity referenced above (U.S. Attorney/Attorney General/Agency).

- **What do I do when I get the certified mail return receipts?**

Once you have received the certified mail return receipts showing that the summons has been delivered, you must file them with the court as proof of service upon the defendant(s).