

Rule 4. Summons

(a) CONTENTS; AMENDMENTS.

- (1) *Contents.* A summons must:
 - (A) name the court and the parties;
 - (B) be directed to the defendant;
 - (C) state the name and address of the plaintiff's attorney or—if unrepresented—of the plaintiff;
 - (D) state the time within which the defendant must appear and defend;
 - (E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;
 - (F) be signed by the clerk; and
 - (G) bear the court's seal.

(2) *Amendments.* The court may permit a summons to be amended.

(3) *Service Outside the District of Columbia; Service in Suit Seeking Seizure of Property in the District of Columbia.* A summons, or notice, or order in lieu of summons should correspond as nearly as possible to the requirements of a statute or rule whenever service is made pursuant to a statute or rule that provides for:

(A) service of a summons, or notice, or order in lieu of summons on a party not an inhabitant of or found within the District of Columbia; or

(B) service on or notice to a party to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of the party's property located within the District of Columbia.

(b) **ISSUANCE.** A prepared summons, with copies for each defendant named in the complaint, must be delivered to the clerk at the time the complaint is filed. If additional process is required, a prepared summons for the additional process must also be delivered to the clerk. On receipt and due notation, the clerk will return all but one copy of the summons to the plaintiff or the plaintiff's agent for service of process in accordance with Rule 4(c), recording on all copies the date of return to the plaintiff or the plaintiff's agent.

(c) SERVICE.

(1) *In General.* A summons must be served with a copy of the complaint, the Initial Order setting the case for an initial scheduling and settlement conference, any addendum to that order, and any other order directed by the court to the parties at the time of filing. The plaintiff is responsible for having the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

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

(3) *By Marshal or Someone Specially Appointed.* At the plaintiff's request, the court may direct that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. This request will only be granted when:

(A) service is to be made on behalf of the United States or an officer or agency of the United States; or

(B) the court issues an order stating that service by a United States marshal or deputy marshal or by a person specially appointed by the court is required for service to be properly made in that particular action.

(4) *By Registered or Certified Mail.* Any defendant described in Rule 4(e), (f), (h), (i), (j)(1), or (j)(3) may be served by mailing a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the person to be served by registered or certified mail, return receipt requested, except as specified in Rule 4(i).

(5) *By First-Class Mail with Notice and Acknowledgment.*

(A) *Requesting an Acknowledgment of Service.* Any defendant described in Rule 4(e), (f), or (h) may be served by mailing—by first-class mail, postage prepaid, to the person to be served:

(i) a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing;

(ii) 2 copies of a Notice and Acknowledgment conforming substantially to Civil Action Form 1-A; and

(iii) a return envelope, postage prepaid, addressed to the sender.

(B) *Failure to Acknowledge Service.* Unless good cause is shown for not doing so, the court must order the party served to pay:

(i) the costs incurred in securing an alternative method of service authorized by this rule if the person served does not complete and return the Notice and Acknowledgment of receipt of the summons within 21 days after mailing; and

(ii) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(6) *Manner of Conducting Service.* Service of process pursuant to Rule 4(c)(2)–(4), or acknowledgment of service pursuant to Rule 4(c)(5), may, at the plaintiff's or the court's election, be attempted either concurrently or successively.

(d) [Omitted].

(e) **SERVING AN INDIVIDUAL WITHIN THE UNITED STATES.** Unless applicable law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose acknowledgment has been filed—may be served anywhere in the United States by:

(1) following District of Columbia law, or the 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, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing 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.

(f) **SERVING AN INDIVIDUAL IN A FOREIGN COUNTRY.** Unless applicable law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose acknowledgment has been filed—may be served at a place not within 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;

(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, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing 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.

(g) **SERVING A MINOR OR AN INCOMPETENT PERSON.** A minor or an incompetent person in the United States must be served by following District of Columbia law (D.C. Code §§ 13-332 and -333 (2012 Repl.)) or the 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 the United States must be served in the manner prescribed by Rule 4(f)(2)(A), (f)(2)(B), or (f)(3).

(h) **SERVING A CORPORATION, PARTNERSHIP, OR ASSOCIATION.** Unless applicable law provides otherwise or the defendant's acknowledgment 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 the United States:

(A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or

(B) by delivering a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing 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 the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

(i) **SERVING THE UNITED STATES AND ITS AGENCIES, CORPORATIONS, OFFICERS, OR EMPLOYEES.**

(1) *United States.* To serve the United States, a party must:

(A)(i) deliver a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the United States Attorney for the District of Columbia—or to an assistant United States attorney or clerical employee whom the United States Attorney designates in a writing filed with the court clerk—or

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States Attorney's Office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

(2) *Agency; Corporation; Officer or Employee Sued in an Official Capacity.* To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing by registered or certified mail to the agency, corporation, officer, or employee.

(3) *Officer or Employee Sued Individually.* To serve a United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).

(4) *Extending Time.* The court must allow a party a reasonable time to cure its failure to:

(A) serve a person required to be served under Rule 4(i)(2), if the party has served either the United States Attorney or the Attorney General of the United States; or

(B) serve the United States under Rule 4(i)(3), if the party has served the United States officer or employee.

(j) SERVING THE DISTRICT OF COLUMBIA, AN AGENCY OR OFFICER OF THE DISTRICT OF COLUMBIA, OR OTHER GOVERNMENT ENTITIES SUBJECT TO SUIT.

(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, 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, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to its chief executive officer; or

(B) serving the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing in the manner prescribed by that state's law for serving a summons or like process on such a defendant.

(3) *District of Columbia.*

(A) *In General.* The District of Columbia must be served by delivering (pursuant to Rule 4(c)(2)-(3)) or mailing (pursuant to Rule 4(c)(4)) a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the Mayor of the District of Columbia (or designee) and the Attorney General of the District of Columbia (or designee).

(B) *Designees.* The Mayor and the Attorney General may each designate an employee for receipt of service of process by filing a written notice with the court clerk.

(C) *Service on a Nonparty.* In any action attacking the validity of an order of an agency or officer of the District of Columbia not made a party, a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing must also be delivered or mailed to the officer or agency.

(D) *Agency; Officer or Employee Sued in an Official Capacity.* To serve a District of Columbia agency or a District of Columbia officer or employee sued only in an official capacity, a party must serve by delivering (pursuant to Rule 4(c)(2)-(3)) or mailing (pursuant to Rule 4(c)(4)) a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the Mayor (or designee), the Attorney General (or designee), as well as the agency, officer, or employee.

(E) *Officer or Employee Sued Individually.* To serve a District of Columbia officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the District of Columbia's behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the District of Columbia under Rule 4(j)(3)(A) and also serve the officer or employee under Rule 4(e), (f), or (g).

(k) TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

(1) *In General.* Serving the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing or filing an acknowledgment of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of this court;

(B) who is a party joined under Rule 14 or 19 and is served at a place not more than 100 miles from the place of the hearing or trial; or

(C) when authorized by a federal or District of Columbia statute.

(2) [Deleted].

(l) PROVING SERVICE.

(1) *Affidavit Required.* Unless service is acknowledged, 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.

(A) *Service by Delivery.* If service is made by delivery pursuant to Rule 4(c)(2)-(3), the return of service must be made under oath (unless service was made by the United States marshal or deputy United States marshal) and must specifically state:

(i) the caption and number of the case;

(ii) the process server's name, residential or business address, and the fact that he or she is 18 years of age or older;

(iii) the time and place when service was made;

(iv) the fact that the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing were delivered to the person served; and

(v) if service was made by delivery to a person other than the party named in the summons, then specific facts from which the court can determine that the person to whom process was delivered meets the appropriate qualifications for receipt of process set out in Rule 4(e)-(j).

(B) *Service by Registered or Certified Mail.* If service is made by registered or certified mail under Rule 4(c)(4), the return must be accompanied by the signed receipt attached to an affidavit which must specifically state:

- (i) the caption and number of the case;
- (ii) the name and address of the person who posted the registered or certified letter;
- (iii) the fact that the letter contained the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing; and
- (iv) if the return receipt does not purport to be signed by the party named in the summons, then specific facts from which the court can determine that the person who signed the receipt meets the appropriate qualifications for receipt of process set out in Rule 4(e)–(j).

(2) *Service Outside the United States.* Service not within the United States must be proved as follows:

- (A) if made under Rule 4(f)(1), as provided in the applicable treaty or convention; or
- (B) if made under Rule 4(f)(2) or (f)(3), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing were delivered to the addressee.

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

(m) TIME LIMIT FOR SERVICE.

(1) *Time Limit; Proof.*

(A) *In General.* Within 60 days of the filing of the complaint or, if an order of publication has been issued, within 60 days from the return date specified in the order, the plaintiff must file either an acknowledgment of service or proof of service of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing. A separate acknowledgement or proof must be filed as to each defendant who has not responded to the complaint.

(B) *Exceptions to Rule 4(m)(1)(A).* The following exceptions apply to the 60-day time limit for filing either an acknowledgment or proof of service in Rule 4(m)(1)(A).

(i) *Actions to Foreclose the Right of Redemption Filed Pursuant to D.C. Code § 47-1370.* In a case filed pursuant to D.C. Code § 47-1370 (2015 Repl.), the plaintiff must file a separate acknowledgment or proof of service for each defendant who has not responded to the complaint no later than 180 days after the complaint was filed.

(ii) *Collection and Subrogation Cases.* The time limit for service in these cases is set forth in Rule 40-III.

(iii) *Service Outside of the United States.* When service is made under Rule 4(f), (h)(2), or (j)(1), the plaintiff must follow the deadlines specified in the relevant statute, treaty, or other international law.

(2) *Motion for Extension of Time.* Prior to the expiration of any of the foregoing time periods, the plaintiff may make a motion to extend the time for service. The motion must set forth in detail the efforts that have been made, and will be made in the future, to obtain service. Except for cases governed by the provisions of Rule 40-III, the court, if the plaintiff shows good cause, must extend the time for an appropriate period.

(3) *Service After Granting Extension of Time.* Along with the materials identified in Rule 4(c)(1), the plaintiff must serve on the party to be served a copy of the order granting a motion for extension of time and notice of the new court date. Proof of service pursuant to Rule 4(l) must include, in addition to the materials identified in that rule, the order granting the motion for extension of time and notice of the new court date.

(4) *Dismissal.* With the exception of cases where service is made under Rule 4(f), (h)(2), or (j)(1), or Rule 54-II, the plaintiff's failure to comply with the requirements of this rule will result in the dismissal without prejudice of the complaint. The clerk will enter the dismissal and serve notice on all the parties. Dismissals of collection and subrogation cases are governed by the provisions of Rule 40-III. Dismissals of actions condemning real or personal property are governed by Rule 71.1.

(n) ASSERTING JURISDICTION OVER PROPERTY OR ASSETS.

(1) *District of Columbia Law.* The court may assert jurisdiction over property if authorized by a District of Columbia statute. Notice to claimants of the property must be given as provided in the statute or by serving a summons under this rule.

(2) *Acquiring Jurisdiction.* On a showing that personal jurisdiction over a defendant cannot be obtained in the District of Columbia by reasonable efforts to serve a summons under this rule, the court may assert jurisdiction over the defendant's assets found in the District of Columbia. Jurisdiction is acquired by seizing the assets under the circumstances and in the manner provided by District of Columbia law.

(o) [Deleted].

COMMENT TO 2017 AMENDMENTS

Rule 4 differs substantially from *Federal Rule of Civil Procedure 4*, as amended in 2007 and 2015. The differences include: 1) the addition of language referring to the "Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing" wherever the rule discusses service of the summons and complaint; 2) the substitution of "District of Columbia" for "the state where the district court is located"; 3) the substitution of "District of Columbia" for "federal" and "state"; 4) the substitution of "applicable law" and "applicable statute" for "federal law" and "federal statute"; 5) the addition of sections (a)(3), (c)(4)–(6), (j)(3), and (l)(1)(A)–(B); 6) revising sections (b) and (m) to reflect Superior Court practice; 7) the insertion of additional language at the end of subsection (c)(3), which limits the circumstances when a U.S. marshal or deputy marshal or specially appointed process server may be used; and 8) the deletion of section (k)(2) as inapplicable to local practice.

Subsection (c)(5) retains the language of former subsection (c)(4), which dealt with sending the defendant a request for an acknowledgment of service via first-class mail. However, the deadline to return the acknowledgment of service has been changed from 20 days to 21 days based on the time-calculation amendments to Rule 6. Additionally, a provision has been added that allows a party to recover the reasonable expenses, including attorney's fees, for filing a motion to collect the costs of service incurred after the defendant failed to acknowledge service.

The provisions governing service on the District of Columbia or a District of Columbia agency, officer, or employee were moved to subsection (j)(3) so that subsections (j)(1)-

(2) would align with the federal rule. Subsection (j)(3) was also amended to specify how service should be made when an officer or employee is sued in their individual capacity for something connected to their duties. Although subsection (j)(1) was omitted in prior versions of Rule 4, it has now been adopted because there are instances where foreign states may be sued in the District of Columbia. See 28 U.S.C. § 1608.

Section (m) was amended to include language previously found in section (o). Accordingly, section (o) has been deleted entirely.

In order to dispose of cases within the time limits set by the Chief Judge in an administrative order, the Superior Court rule retains the 60-day service provision in section (m). That 60-day provision permits cases to proceed to an initial hearing within 90-120 days of filing the complaint. Exceptions to that 60-day service provision include the collection and subrogation cases defined in Rule 40-III, cases filed under D.C. Code § 47-1370 (2015 Repl.) (see section (m)(1)(B)(i)), cases where an order of publication has been issued, and any other exceptions set forth in these rules or provided by statute, treaty (see section (f)), or other international law.

Finally, subsection (m)(4) includes the 2015 amendment to the federal rule, which clarified that the reference to Rule 4 in Rule 71.1(d)(3)(A) did not include Rule 4(m). Dismissal of actions condemning real or personal property is governed by Rule 71.1 and is not affected by Rule 4(m).

COMMENT

Federal Rule of Civil Procedure 4 was substantially revised and reorganized effective December 1, 1993. In order to maintain uniformity with the Federal Rule to the maximum extent feasible, Superior Court Rule of Civil Procedure 4 has been similarly revised and reorganized to match the structure and substance of the new Federal Rule in large part. Although most provisions of new Superior Court Rule 4 are identical to those of new Federal Rule 4, there are a few variations. Throughout the rule reference is made to the initial order. This refers to the order setting the initial scheduling conference that is given to plaintiffs at the time of their filing the summons and complaint. Many of the other variations result from the obvious inapplicability of the federal provisions and thus require no explanation. A few of the variations merit comment.

Subdivision (a) of this rule is virtually identical to new Federal Rule 4(a) except for the final sentence, which has been added to preserve the substance of a useful provision, contained in former SCR-Civil 4(b), regarding the form of summons or notice to be used when service is made outside the District of Columbia or is based on the seizure of property within the District.

In subdivision (b), the prior Superior Court provision concerning issuance of the summons has been retained, in lieu of the new federal rule provision. The prior Superior Court provision is well known to the Clerk's Office and the Bar and has worked well.

In subdivision (c), a sentence has been added to paragraph (2) to retain the language, contained in former SCR-Civil 4(c)(2)(B), regarding the limited circumstances in which service by a U.S. marshal, deputy marshal, or specially appointed process server is permitted.

Paragraph 3 has been added to subdivision (c) to preserve the long-standing Superior Court practice of allowing service of a summons, complaint and initial order by registered or certified mail, return receipt requested. This practice has been extensively used for years in this Court with great success and little difficulty. Paragraph 4 retains the language of former SCR-Civil 4(c)(2)(C) and (D) which deal with sending the defendant, via first-class mail, a request for an acknowledgment of service.

A paragraph (5) has been added to subdivision (c) to retain the provision of former SCR-Civil 4(c) allowing the plaintiff to attempt service through alternative means, either concurrently or successively.

In subdivision (j), paragraph 1 of the Federal Rule dealing with service upon a foreign national has been deleted as inapplicable to Superior Court jurisdiction. In its place has been inserted the provisions, previously contained in SCR-Civil 4(d)(4), governing service on the District of Columbia or an officer of [or] agency thereof.

In subdivision (1), there has been inserted language describing the information required in affidavits of personal service and mail service. These provisions were previously contained in SCR-Civil 4(g).

Finally, Federal Rule 4(m), which allows 120 days to effect service or obtain a waiver thereof, has been replaced entirely with the language previously contained in Superior Court Rule 4(j). That provision allowed 60 days for effecting service so that the case could proceed to an Initial Scheduling Conference within 90-120 days of filing the complaint (except in cases where an order of publication has been issued) and a disposition within the time limits recommended by the American Bar Association (i.e., one year in 90% of cases and two years in 100% of cases). The rule has an additional paragraph (o) allowing greater time for service of the summons in cases filed under D.C. Code § 47-1370.