

INSTRUCTIONS FOR COMPLETING WAIVER OF SERVICE FORMS

Follow these instructions to complete the Notice of Lawsuit and Request for Waiver of Service of Summons. Attached to these instructions are sample forms. Also attached are blank forms. The forms consist of two pages: (1) the Notice of Lawsuit and Request of Waiver of Service of Summons form (to be completed by you), and (2) the Waiver of Service of Summons (to be completed by the defendant). You must make one copy of the blank waiver forms to be completed by you for each defendant when serving the complaint by mail under Fed R. Civ. P. 4(d) (attached hereto). Fill in each blank with the appropriate information as indicated by the letter key below for each defendant you are serving.

- (A) = Name of defendant, if an individual. If you are suing a corporation, partnership or other unincorporated association, write the name of the officer or agent for service here.
- (B) = Title of person named for the corporation, partnership or association. For example, "as officer or agent." Leave blank if you are not suing a corporation, partnership or association.
- (C) = Name of defendant corporation, partnership or association. Leave blank if not applicable.
- (D) = Name of court, Eastern District of New York
- (E) = The docket number and Judge's initials stamped on your summons.
Example: 94 CV 1234 (XYZ).
- (F) = Write 30 days for defendants in the United States, or 60 days for defendants outside of the United States.

Note: 1. Date and sign the Notice of Lawsuit and Request for Waiver of Service of Summons form.

2. Make **three copies** of the completed Notice of Lawsuit and Request for Waiver of Service of Summons and of the blank Waiver of Service of Summons (to be completed by defendant).

3. Send two copies of the forms to each defendant by first-class mail, along with a copy of the complaint and a stamped, self-addressed envelope, so defendant can mail the waiver of service form back to you.

4. Keep one copy of the completed forms for each defendant for your records.

Sample Form of
Notice of Lawsuit and Request for Waiver of Service of Summons

To: _____ (A)

{as _____ (B) Of _____ (C) }

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the _____ (D) and has been assigned docket number _____ (E)

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the costs of serving you with judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) _____ days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, as authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the reverse side (or at the foot) of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this _____ day of _____, _____.

Signature of Plaintiff, Pro Se

Sample Form of
Waiver of Service of Summons

TO: _____ (name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of _____ (caption of action)

which is case number _____ (docket number) _____ in the United States District Court for the _____ (district) _____. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after (date request was sent), or within 90 days after that date if the request was sent outside the United States.

Date

Signature

Print name

{as _____ }

{of _____ }

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant who, after being notified of an action and asked to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or even its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must (within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against the defendant, by waiving service, a defendant is allowed more time to answer than if the summons has been actually served when the request for waiver of service was received.

In compliance with
Federal Rules of Civil Procedure 4

Revised 6/2002

Notice of Lawsuit and Request for Waiver of Service of Summons

TO: _____

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the _____ and has been assigned docket number _____

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the costs of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within _____ days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, as authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the reverse side (or at the foot) of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this _____ day of _____, _____.

Signature of Plaintiff, Pro Se

In compliance with
Federal Rules of Civil Procedure 4

Waiver of Service of Summons

TO: _____

I acknowledge receipt of your request that I waive service of a summons in the action of _____ which is case number _____ in the United States District Court for the _____. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after _____, or within 90 days after that date if the request was sent outside the United States.

Date

Signature

Print name

{as _____}

{of _____}

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant who, after being notified of an action and asked to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or even its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must (within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against the defendant, by waiving service, a defendant is allowed more time to answer than if the summons has been actually served when the request for waiver of service was received.

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