

PROCEDURE FOR SERVING A COMPLAINT ON
INDIVIDUALS
IN A FEDERAL LAWSUIT

A plaintiff who is allowed to proceed in a civil action brought pursuant to 42 U.S.C. § 1983 against state or county officials in their individual capacities or other individuals may satisfy the service requirements of Fed. R. Civ. P. 4 by following one of two procedures.

Option One

Plaintiff may notify each defendant in writing of the filing of his lawsuit and request that the defendant waive service of a summons. Fed. R. Civ. P. 4(d)(2). If plaintiff chooses this method of service, he must

- complete for each defendant an original and one copy of a form titled “Notice of a Lawsuit and Request to Waive Service of a Summons” (blank notice forms are attached to this document);
- address a large envelope to each individual defendant and place the following documents inside:
 - 1) an original and one copy of the completed notice form;
 - 2) a blank form titled “Waiver of Service of Summons” (also enclosed with this procedure);
 - 3) a copy of his complaint;
 - 4) a copy of the court’s order allowing plaintiff to proceed, if such an order was issued; and
 - 5) a self-addressed, stamped envelope for the defendant’s use in returning the waiver form to him;
- mail the envelope to each defendant by first-class mail or other reliable means;
- allow the defendants "a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent" (Fed. R. Civ. P. 4(d)(2)(F)).
- mail a copy of the signed waiver forms to the court for filing as proof of service.

Option Two

Note well: This procedure need not be followed unless a defendant refuses to complete and return a waiver form as described above.

Plaintiff may arrange to serve each defendant personally with a summons and complaint. If plaintiff chooses this method of service, he must

- complete a summons form for each defendant (summons forms are available on request from the clerk of court);
- present the completed summons forms to the clerk of this court to obtain his signature and an imprint of the court's seal;
- arrange for someone over the age of 18 years of age who is not a party to the lawsuit to
 - 1) deliver the signed and sealed summons and a copy of the complaint to each defendant personally; or
 - 2) leave the summons and complaint at the defendant's house with a person of suitable age and discretion who lives there with the defendant; or
 - 3) deliver the summons and complaint to an agent authorized by appointment or by law to receive service of process on the defendant's behalf; or
 - 4) serve defendant in accordance with state law, Fed. R. Civ. P. 4(h)(1)(A); Wis. Stat. § 801.11.
- file with the court an affidavit of the person who effected service of the summons and complaint upon the defendants stating the time and date the delivery was made and with whom the summons and complaint was left, or showing a receipt signed by the defendant or other evidence of delivery. Fed. R. Civ. P. 4(l).