



DEMO CIVIL PROCEDURE HYPERLINKED

Federal Rules of Civil Procedure 2006

Effective September 16, 1938, as amended to December 1, 2005

Crogware Publishing
crogware.wisteriamanor.com

Copyright 2006 © All Rights Reserved. Please read the [Licensing Agreement](#) and the [Introduction](#) below.

Separately Available from [Crogware Publishing](#):

Civil Procedure; Evidence; Crimes; Torts and Negligence; Contracts; Constitution; Corporations; Bouvier Law Dictionary - 1856.

Licensing Agreement

Receipt of this book is a grant of a license authorizing personal use to the recipient if it has been transmitted or otherwise delivered to the user by Crogware Publishing. Non-personal use or use by anyone other than the recipient is expressly prohibited without specific authorization from Crogware Publishing. Please read the copyright below.

To verify authorization or to obtain the necessary permissions and authorization for any otherwise prohibited use please contact Crogware Publishing by email: crogware@wisteriamanor.com. Comments and Suggestions are always appreciated at the same email address.

Visit <http://crogware.wisteriamanor.com> to see other titles available.

Copyright © 2006 by Crogware Publishing. All Rights Reserved. This publication is Licensed, not sold. Resale of this publication is strictly prohibited. All title and copyrights in and to this publication and all Intellectual property rights in and to the content are owned by Crogware Publishing. No part of this electronic book may be reproduced in any way, or transmitted by any means or in any medium, electronic, mechanical or printed without the prior express written permission of the Publisher. In addition, any resale or other disposition for direct or indirect commercial advantage of this electronic book is strictly prohibited by Section 109(b) of the Copyright Act, 17 U.S.C. § 109(b). Printed in or transmitted from the United States of America. To contact Crogware Publishing email to: crogware@wisteriamanor.com.

INTRODUCTION

Civil Procedure Hyperlinked is a reformatted version of the Federal Rules of Civil Procedure based on the rules as published by the General Printing Office of the United States in the 2005 revision including selected notes of the Advisory Committee on Proposed Rules. The full notes can be found in the appendix section of Title 28 of the United States Code.

The purpose of this book is to present the Rules of Civil Procedure in itemized rather than paragraph form in order to make the elements of each rule readily identifiable. Each rule and each element is hyperlinked when cross-referenced so that a click of the mouse will take the reader to a referenced term, rule, or element. The hyperlinks provide a way for the reader to gain a more complete understanding of the interrelationship between different or related terms in an efficient manner.

The notes selected for inclusion are those found to be helpful in explaining the intent, purpose, and operation of each rule and element. The book includes only those notes relevant to the rules currently in effect. Notes historical in nature, or irrelevant to the current version of the rules are not included.

Citations and Authorities are included where space permits, however when necessary to make the rule and the selected notes fit on a single page, they have been either removed or reduced to one citation or authority instead of multiple ones.

The Bookmarks Section provides the reader with easy navigation through the Rules and makes the book an excellent and efficient reference source. Also included is a Subject Outline Section which can be used for test preparation or as a quick reference.

Use of this book in electronic form provides both a unique learning experience and a handy reference tool based on the hyperlink features employed. Letters in blue text are hyperlinks that will take the reader to the section of the book related to the word or phrase. Clicking on the Back Arrow in the navigation toolbar area returns the reader to the previous section. Please note that the functions and layout features will vary depending on the set up and capabilities of the specific reader program. To get an idea about how to use these features, use the mouse to left click on any words in [blue](#) text.

For best printing results, select print to fit in the print menu. Also, the Bookmarks Tab should be on the left side of the screen. If there are miniature pages on the left side of the screen instead of bookmarks, click the bookmarks tab for an easy way to navigate through the rules. If you received the book by email attachment, it is recommended to download the file to your hard drive. Further, downloading to the hard drive is necessary for offline use.

Please contact Crogware Publishing at crogware@wisteriamanor.com with Questions, Comments and Suggestions.

Sincerely, Edward Torriel

Separately Available from [Crogware Publishing](#)

Mnemonics Series: Crimes; Torts and Negligence; Contracts; Constitution

Hyperlinked Series: Civil Procedure; Evidence; Corporations; Bouvier Law Dictionary - 1856.

Article I

Scope of Rules--One Form of Action

Rule 1: [Scope and Purpose of Rules.](#)

Rule 2: [One Form of Action.](#)

Rule 1: Scope and Purpose of Rules

These rules govern the procedure in the United States district courts in all suits of a [civil nature](#) whether cognizable as cases at law or in equity or in [admiralty](#), with the exceptions stated in [Rule 81](#).

They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

District Courts of the United States

The expression "district courts of the United States" appearing in the statute authorizing the Supreme Court of the United States to promulgate rules of civil procedure does not include the district courts held in the Territories and insular possessions. See *Mookini et al. v. U.S.*, 303 U.S. 201, 58 S.Ct. 543, 82 L.Ed. 748 (1938).

Civil in Nature

This is the fundamental change necessary to effect unification of the civil and [admiralty](#) procedure. Just as the 1938 rules abolished the distinction between actions at law and suits in equity, this change would abolish the distinction between [civil actions](#) and [suits in admiralty](#). See also [Rule 81](#).

Rule 81 Exceptions

[Rule 81](#) states certain limitations in the application of these rules to enumerated special proceedings.

Construed and Administered

The purpose of this revision, adding the words "and administered" to the second sentence, is to recognize the affirmative duty of the court to exercise the authority conferred by these rules to ensure that civil litigation is resolved not only fairly, but also without undue cost or delay. As officers of the court, attorneys share this responsibility with the judge to whom the case is assigned.

Rule 2: One Form of Action

*There shall be **one form of action** to be known as "civil action."*

Reference to actions at law or suits in equity in all statutes should now be treated as referring to the civil action prescribed in these rules.

Article II

Commencement; Service of Process, Pleadings, Motions, Orders

Rule 3: [Commencement of Action.](#)

Rule 4: [Summons.](#)

Rule 4.1: [Service of Other Process.](#)

Rule 5: [Serving and Filing Pleadings and Other Papers.](#)

Rule 6: [Time.](#)

Rule 3: Commencement of Action

A *civil action* is commenced by *filing a complaint* with the court.

Rule 5(e) defines what constitutes *filing with the court*.

Rule 4: Summons

- (a) Form.*
- (b) Issuance.*
- (c) Service with Complaint; by Whom Made.*
- (d) Waiver of Service; Duty to Save Costs of Service; Request to Waive.*
- (e) Service Upon Individuals Within a Judicial District of the United States.*
- (f) Service Upon Individuals in a Foreign Country.*
- (g) Service Upon Infants and Incompetent Persons.*
- (h) Service Upon Corporations and Associations.*
- (i) Serving the United States, Its Agencies, Corporations, Officers, or Employees.*
- (j) Service Upon Foreign, State, or Local Governments.*
- (k) Territorial Limits of Effective Service.*
- (l) Proof of Service.*
- (m) Time Limit for Service.*
- (n) Seizure of Property; Service of Summons Not Feasible.*

(a) Form

The summons shall be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff.

It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint.

The court may allow a summons to be amended.

(b) Issuance

Upon or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is in proper form, the clerk shall sign, seal, and issue it to the plaintiff for service on the defendant.

A summons, or a copy of the summons if addressed to multiple defendants, shall be issued for each defendant to be served. The revised text makes clear that the responsibility for filling in the summons falls on the plaintiff, not the clerk of the court.

If there are multiple defendants, the plaintiff may secure issuance of a summons for each defendant, or may serve copies of a single original bearing the names of multiple defendants if the addressee of the summons is effectively identified.

(c) Service with Complaint; by Whom Made

(1) A *summons* shall be *served* together with a copy of the *complaint*. The plaintiff is responsible for *service* of a *summons* and *complaint* within the *time* allowed under *subdivision (m)* and shall furnish the person effecting *service* with the necessary copies of the *summons* and *complaint*.

(2) *Service* may be effected by any person who is not a party and who is at least 18 years of age.

At the request of the plaintiff, however, the court may direct that *service* be effected by a United States marshal, deputy United States marshal, or other person or officer specially appointed by the court for that purpose.

Such an appointment must be made when the plaintiff is authorized to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 or is authorized to proceed as a seaman under 28 U.S.C. § 1916.

The 1983 revision of [Rule 4](#) relieved the marshals' offices of much of the burden of [serving the summons](#).

Subdivision (c) eliminates the requirement for [service](#) by the marshal's office in actions in which the party seeking [service](#) is the United States. The United States, like other civil litigants, is now permitted to designate any person who is 18 years of age and not a party to [serve its summons](#).

The court remains obligated to appoint a marshal, a deputy, or some other person to effect [service of a summons](#) in two classes of cases specified by statute: actions brought in forma pauperis or by a seaman. 28 U.S.C. § 1915, 1916.

The court also retains discretion to appoint a process server on [motion](#) of a party.

If a law enforcement presence appears to be necessary or advisable to keep the peace, the court should appoint a marshal or deputy or other official person to make the [service](#).

The Department of Justice may also call upon the Marshals Service to perform [services](#) in actions brought by the United States. 28 U.S.C. § 651.

(d) Waiver of Service; Duty to Save Costs of Service; Request to Waive

- (1) Waiver does not Prejudice Rights.*
- (2) Notice and Request for Waiver.*
- (3) Waiver Extends the Time for Answer.*
- (4) Effect of Waiver.*
- (5) Cost-Shifting Provision: Failure to Waive Service*

Purpose of Waiver Request

The aims of the provision are to eliminate the costs of [service of a summons](#) on many parties and to foster cooperation among adversaries and counsel. The rule operates to impose upon the defendant those costs that could have been avoided if the defendant had cooperated reasonably in the manner prescribed.

This device is useful in dealing with defendants who are furtive, who reside in places not easily reached by process servers, or who are [outside the United States](#) and can be [served](#) only at substantial and unnecessary expense.

Illustratively, there is no useful purpose achieved by requiring a plaintiff to comply with all the formalities of [service](#) in a [foreign country](#), including costs of translation, when suing a defendant manufacturer, fluent in English, whose products are widely distributed in the United States. See *Bankston v. Toyota Motor Corp.*, 889 F.2d 172 (8th Cir. 1989).

The [request for waiver of service](#) may be sent only to defendants subject to [service](#) under subdivision (e), (f), or (h). The [United States](#) is not expected to waive service for the reason that its mail receiving facilities are inadequate to assure that the notice is actually received by the correct person in the Department of Justice. The same principle is applied to [agencies, corporations, and officers of the United States](#) and to other [governments and entities](#) subject to [service](#) under subdivision (j). Moreover, there are policy reasons why governmental entities should not be confronted with the potential for bearing costs of [service](#) in cases in which they ultimately prevail. [Infants or incompetent persons](#) likewise are not called upon to [waive service](#) because, due to their presumed inability to understand the request and its consequences, they must generally be [served](#) through fiduciaries.

The [opportunity for waiver](#) has distinct advantages to a foreign defendant. By waiving service, the defendant can [reduce the costs](#) that may ultimately be taxed against it if unsuccessful in the lawsuit, including the sometimes substantial expense of translation that may be wholly unnecessary for defendants fluent in English. Moreover, a foreign defendant that [waives service](#) is afforded substantially more [time](#) to defend against the action than if it had been [formally served](#): under [Rule 12](#), a defendant ordinarily has only 20 days after [service](#) in which to [file](#) its [answer](#) or [raise objections](#) by [motion](#), but by [signing a waiver](#) it is allowed 90 days after the date the [request for waiver](#) was mailed in which to submit its [defenses](#). Because of the additional [time](#) needed for mailing and the unreliability of some foreign mail services, a [period](#) of 60 days (rather than the 30 days required for domestic transmissions) is provided for a [return of a waiver](#) sent to a [foreign country](#).

It is hoped that, since transmission of the [notice](#) and [waiver](#) forms is a private nonjudicial act, does not purport to effect [service](#), and is not accompanied by any [summons](#) or directive from a court, use of the procedure will not offend foreign sovereignties, even those that have withheld their assent to [formal service](#) by mail or have objected to the "service-by-mail" provisions of the former rule. Unless the [addressee consents](#), receipt of the request under the revised rule does not give rise to any obligation to [answer the lawsuit](#), does not provide a basis for [default judgment](#), and does not suspend the [statute of limitations](#) in those states where the [period](#) continues to run until [service](#). Nor are there any adverse consequences to a [foreign defendant](#), since the provisions for [shifting the expense of service](#) to a defendant that declines to waive service apply only if the plaintiff and defendant are both located in the United States.

With respect to a defendant located in a [foreign country](#) like the United Kingdom, which accepts documents in English, whose Central Authority acts promptly in effecting service, and whose policies discourage its residents from [waiving formal service](#), there will be little reason for a plaintiff to send the [notice and request](#) under subdivision (d) rather than use [convention methods](#). On the other hand, the procedure offers significant potential benefits to a plaintiff when suing a defendant that, though fluent in English, is located in a country where, as a condition to [formal service under a convention](#), documents must be translated into another language or where [formal service](#) will be otherwise costly or time-consuming.

(d)(1) Waiver does not Prejudice Rights

A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

Paragraph (1) is explicit that a timely waiver of service of a summons does not prejudice the right of a defendant to object by means of a motion authorized by Rule 12(b)(2) to the absence of jurisdiction over the defendant's person, or to assert other defenses that may be available.

The only issues eliminated are those involving the sufficiency of the summons or the sufficiency of the method by which it is served.

(d)(2) Notice and Request for Waiver

An individual, corporation, or association that is subject to *service* under subdivision (e), (f), or (h) and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of *servicing the summons*. To avoid costs, the plaintiff may notify such a defendant of the *commencement of the action* and request that the defendant waive *service of a summons*.

The notice and request

- A. shall be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer or managing or general agent (or other agent authorized by appointment or law to receive *service of process*) of a defendant subject to *service* under subdivision (h);
- B. shall be dispatched through first-class mail or other reliable means;
- C. shall be accompanied by a copy of the *complaint* and shall identify the court in which it has been filed;
- D. shall inform the defendant, by means of a text prescribed in an *official form* promulgated pursuant to *Rule 84*, of the consequences of compliance and of a failure to comply with the request;
- E. shall set forth the date on which the request is sent;
- F. shall allow the defendant a reasonable *time* to *return the waiver*, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed *outside any judicial district of the United States*; and
- G. shall provide the defendant with an extra copy of the *notice and request*, as well as a prepaid means of compliance in writing.

If a defendant located within the United States fails to comply with a *request for waiver* made by a plaintiff located within the United States, the court shall *impose the costs* subsequently incurred in effecting *service* on the defendant unless good cause for the failure be shown.

[T]he defendant has a duty to avoid costs associated with the *service of a summons* not needed to inform the defendant regarding the *commencement of an action*. The text of the rule also sets forth the requirements for a *Notice and Request for Waiver* sufficient to put the *cost-shifting provision* in place.

Paragraph (2)(A) is explicit that a *request for waiver* of *service* by a *corporate defendant* must be addressed to a person qualified to receive *service*. The general mail rooms of large organizations cannot be required to identify the appropriate individual recipient for an *institutional summons*.

Paragraph (2)(B) permits the use of alternatives to the United States mails in sending the *Notice and Request*. While private messenger services or electronic communications may be more expensive than the mail, they may be equally reliable and on occasion more convenient to the parties. Especially with respect to transmissions to *foreign countries*, alternative means may be desirable, for in some countries facsimile transmission is the most efficient and economical means of communication. If electronic means such as facsimile transmission are employed, the sender should maintain a record of the transmission to assure proof of transmission if receipt is denied, but a party receiving such a transmission has a duty to cooperate and cannot avoid liability for the resulting cost of *formal service* if the transmission is prevented at the point of receipt.

A defendant failing to comply with a *request for waiver* shall be given an opportunity to show good cause for the failure, but sufficient cause should be rare. It is not a good cause for failure to waive *service* that the *claim* is unjust or that the court *lacks jurisdiction*. Sufficient cause not to *shift the cost of service* would exist, however, if the defendant did not receive the request or was insufficiently literate in English to understand it. It should be noted that the provisions for *shifting the cost of service* apply only if the plaintiff and the defendant are both located in the United States, and accordingly a *foreign defendant* need not show "good cause" for its failure to waive *service*.

(d)(3) Waiver Extends the Time for Answer

A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside any judicial district of the United States.

Paragraph (3) extends the time for answer if, before being served with process, the defendant waives formal service.

The extension is intended to serve as an inducement to waive service and to assure that a defendant will not gain any delay by declining to waive service and thereby causing the additional time needed to effect service.

By waiving service, a defendant is not called upon to respond to the complaint until 60 days from the date the notice was sent to it--90 days if the notice was sent to a foreign country--rather than within the 20 day period from date of service specified in Rule 12.

(d)(4) Effect of Waiver

When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and complaint had been served at the time of filing the waiver, and no proof of service shall be required.

Paragraph (4) clarifies the effective date of service when service is waived; the provision is needed to resolve an issue arising when applicable law requires service of process to toll the statute of limitations. E.g., *Morse v. Elmira Country Club*, 752 F.2d 35 (2d Cir. 1984). Cf. *Walker v. Armco Steel Corp.*, 446 U.S. 740 (1980).

The revised rule is clear that, if the waiver is not returned and filed, the limitations period under such a law is not tolled and the action will not otherwise proceed until formal service of process is effected.

Some state limitations laws may toll an otherwise applicable statute at the time when the defendant receives notice of the action. Nevertheless, the device of requested waiver of service is not suitable if a limitations period which is about to expire is not tolled by filing the action. Unless there is ample time, the plaintiff should proceed directly to the formal methods for service identified in subdivisions (e), (f), or (h).

The procedure of requesting waiver of service should also not be used if the time for service under subdivision (m) will expire before the date on which the waiver must be returned. While a plaintiff has been allowed additional time for service in that situation, e.g., *Prather v. Raymond Constr. Co.*, 570 F. Supp. 278 (N.D. Ga. 1983), the court could refuse a request for additional time unless the defendant appears to have evaded service pursuant to subdivision (e) or (h). It may be noted that the presumptive time limit for service under subdivision (m) does not apply to service in a foreign country.

(d)(5) Cost-Shifting Provision

The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under subdivision (e), (f), or (h), together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.

Paragraph (5) is a cost-shifting provision retained from the former rule.

The costs that may be imposed on the defendant could include, for example, the cost of the time of a process server required to make contact with a defendant residing in a guarded apartment house or residential development. The paragraph is explicit that the costs of enforcing the cost-shifting provision are themselves recoverable from a defendant who fails to return the waiver. In the absence of such a provision, the purpose of the rule would be frustrated by the cost of its enforcement, which is likely to be high in relation to the small benefit secured by the plaintiff.

Some plaintiffs may send a notice and request for waiver and, without waiting for return of the waiver, also proceed with efforts to effect formal service on the defendant. To discourage this practice, the cost-shifting provisions in paragraphs (2) and (5) are limited to costs of effecting service incurred after the time expires for the defendant to return the waiver. Moreover, by returning the waiver within the time allowed and before being served with process, a defendant receives the benefit of the longer period for responding to the complaint afforded for waivers under paragraph (3).

(e) Service Upon Individuals Within a Judicial District of the United States

Unless otherwise provided by federal law, *service* upon an individual from whom a *waiver* has not been *obtained and filed*, other than an *infant or an incompetent person*, may be effected in any judicial district of the United States:

(1) pursuant to the law of the state in which the district court is located, or in which *service* is effected, for the *service of a summons* upon the defendant in an action brought in the courts of general jurisdiction of the State; or

(2) by delivering a copy of the *summons and of the complaint* to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the *summons and of the complaint* to an agent authorized by appointment or by law to receive *service of process*.

Service of the summons under this subdivision does not conclusively establish the *jurisdiction* of the court over the person of the defendant. A defendant may assert the *territorial limits* of the court's reach set forth in *subdivision (k)*, including the constitutional limitations that may be imposed by the Due Process Clause of the Fifth Amendment.

Paragraph (1) authorizes *service* in any judicial district in conformity with state law. This paragraph sets forth the language of former subdivision (c)(2)(C)(i), which authorized the use of the law of the state in which the district court sits, but adds as an alternative the use of the law of the state in which the *service* is effected.

Paragraph (2) retains the text of the former subdivision (d)(1) and authorizes the use of the familiar methods of personal or abode *service* or *service* on an authorized agent in any judicial district.

Rule 4.1: Service of Other Process

(a) Generally. *Process other than a summons as provided in Rule 4 or subpoena as provided in Rule 45 shall be served by a United States marshal, a deputy United States marshal, or a person specially appointed for that purpose, who shall make proof of service as provided in Rule 4(l). The process may be served anywhere within the territorial limits of the state in which the district court is located, and, when authorized by a statute of the United States, beyond the territorial limits of that state.*

(b) Enforcement of Orders: Commitment for Civil Contempt. *An order of civil commitment of a person held to be in contempt of a decree or injunction issued to enforce the laws of the United States may be served and enforced in any district. Other orders in civil contempt proceedings shall be served in the state in which the court issuing the order to be enforced is located or elsewhere within the United States if not more than 100 miles from the place at which the order to be enforced was issued.*

This is a new rule. Its purpose is to separate those few provisions of the former Rule 4 bearing on matters other than service of a summons to allow greater textual clarity in Rule 4.

Subdivision (a) contains no new language.

Subdivision (b) replaces the final clause of the penultimate sentence of the former subdivision 4(f), a clause added to the rule in 1963.

The new rule provides for nationwide service of orders of civil commitment enforcing decrees of injunctions issued to compel compliance with federal law. The rule makes no change in the practice with respect to the enforcement of injunctions or decrees not involving the enforcement of federally-created rights.

Service of process is not required to notify a party of a decree or injunction, or of an order that the party show cause why that party should not be held in contempt of such an order. With respect to a party who has once been served with a summons, the service of the decree or injunction itself or of an order to show cause can be made pursuant to Rule 5. Thus, for example, an injunction may be served on a party through that person's attorney. *Chagas v. U.S.*, 369 F.2d 643 (5th Cir. 1966). The same is true for service of an order to show cause. *Waffenschmidt v. Mackay*, 763 F.2d 711 (5th Cir. 1985).

The new rule does not affect the reach of the court to impose criminal contempt sanctions. Nationwide enforcement of federal decrees and injunctions is already available with respect to criminal contempt: a federal court may effect the arrest of a criminal contemnor anywhere in the United States, 28 U.S.C. § 3041, and a contemnor when arrested may be subject to removal to the district in which punishment may be imposed. Fed. R. Crim. P. 40. Thus, the present law permits criminal contempt enforcement against a contemnor wherever that person may be found.

The effect of the revision is to provide a choice of civil or criminal contempt sanctions in those situations to which it applies. Contempt proceedings, whether civil or criminal, must be brought in the court that was allegedly defied by a contumacious act. *Ex parte Bradley*, 74 U.S. 366 (1869). This is so even if the offensive conduct or inaction occurred outside the district of the court in which the enforcement proceeding must be conducted. E.g., *McCourtney v. U.S.*, 291 Fed. 497 (8th Cir.), cert. denied, 263 U.S. 714 (1923). For this purpose, the rule as before does not distinguish between parties and other persons subject to contempt sanctions by reason of their relation or connection to parties.

Rule 5: Serving and Filing Pleadings and Other Papers

- (a) Service: When Required.*
- (b) Making Service.*
- (c) Same: Numerous Defendants.*
- (d) Filing; Certificate of Service.*
- (e) Filing with the Court Defined.*

(a) Service: When Required

Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties.

No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) Making Service

(1) *Service under Rules 5(a) and 77(d) on a party represented by an attorney is made on the attorney unless the court orders service on the party.*

(2) *Service under Rule 5(a) is made by:*

A. *Delivering a copy to the person served by:*

(i) *handing it to the person;*

(ii) *leaving it at the person's office with a clerk or other person in charge, or if no one is in charge leaving it in a conspicuous place in the office; or*

(iii) *if the person has no office or the office is closed, leaving it at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.*

B. *Mailing a copy to the last known address of the person served. Service by mail is complete on mailing.*

C. *If the person served has no known address, leaving a copy with the clerk of the court.*

D. *Delivering a copy by any other means, including electronic means, consented to in writing by the person served.*

Service by electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. If authorized by local rule, a party may make service under this subparagraph (D) through the court's transmission facilities.

(3) *Service by electronic means under Rule 5(b)(2)(D) is not effective if the party making service learns that the attempted service did not reach the person to be served.*

Rule 5(b)(1) makes it clear that the provision for service on a party's attorney applies only to service made under Rules 5(a) and 77(d). Service under Rules 4, 4.1, 45(b), and 71A(d)(3) - as well as rules that invoke those rules - must be made as provided in those rules.

Subparagraph (D) of Rule 5(b)(2) is new. It authorizes service by electronic means or any other means, but only if consent is obtained from the person served. The consent must be express, and cannot be implied from conduct. Subparagraph (D) also authorizes service by nonelectronic means. The Rule 5(b)(2)(B) provision making mail service complete on mailing is extended in subparagraph (D) to make service by electronic means complete on transmission; transmission is effected when the sender does the last act that must be performed by the sender. Service by other agencies is complete on delivery to the designated agency.

Finally, subparagraph (D) authorizes adoption of local rules providing for service through the court. Electronic case filing systems will come to include the capacity to make service by using the court's facilities to transmit all documents filed in the case. It may prove most efficient to establish an environment in which a party can file with the court, making use of the court's transmission facilities to serve the filed paper on all other parties. Transmission might be by such means as direct transmission of the paper, or by transmission of a notice of filing that includes an electronic link for direct access to the paper. Because service is under subparagraph (D), consent must be obtained from the persons served.

Consent to service under Rule 5(b)(2)(D) must be in writing, which can be provided by electronic means. Parties are encouraged to specify the scope and duration of the consent. The specification should include at least the persons to whom service should be made, the appropriate address or location for such service - such as the e-mail address or facsimile machine number, and the format to be used for attachments. A district court may establish a registry or other facility that allows advance consent to service by specified means for future actions.

Paragraph (3) addresses a question that may arise from a literal reading of the provision that service by electronic means is complete on transmission. Ordinarily the risk of non-receipt falls on the person being served, who has consented to this form of service. But the risk should not extend to situations in which the person attempting service learns that the attempted service in fact did not reach the person to be served. Given actual knowledge that the attempt failed, service is not effected. The person attempting service must either try again or show circumstances that justify dispensing with service.

(c) Same: Numerous Defendants

*In any action in which there are unusually large numbers of defendants, the court, upon **motion** or of its own initiative, may order that **service** of the **pleadings** of the defendants and replies thereto need not be made as between the defendants and that any **cross-claim**, **counterclaim**, or matter constituting an **avoidance or affirmative defense** contained therein shall be deemed to be **denied or avoided** by all other parties and that the **filing** of any such **pleading** and **service** thereof upon the plaintiff constitutes due notice of it to the parties.*

*A copy of every such order shall be **served** upon the parties in such manner and form as the court directs.*

(d) Filing; Certificate of Service

All papers after the complaint required to be served upon a party, together with a certificate of service, must be filed with the court within a reasonable time after service, but disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: (i) depositions, (ii) interrogatories, (iii) requests for documents or to permit entry upon land, and (iv) requests for admission.

Rule 5(d) is amended to provide that disclosures under Rule 26(a)(1) and (2), and discovery requests and responses under Rules 30, 31, 33, 34, and 36 must not be filed until they are used in the action. "Discovery requests" includes deposition notices and "discovery responses" includes objections.

The rule supersedes and invalidates local rules that forbid, permit, or require filing of these materials before they are used in the action.

Disclosures under Rule 26(a)(3), however, must be promptly filed as provided in Rule 26(a)(3).

Filings in connection with Rule 35 examinations, which involve a motion proceeding when the parties do not agree, are unaffected by these amendments.

Once discovery or disclosure materials are used in the proceeding, the filing requirements of Rule 5(d) should apply to them.

(e) Filing with the Court Defined

*The **filing of papers with the court** as required by these rules shall be made by **filing them with the clerk of court**, except that the judge may permit the papers to be **filed with the judge**, in which event the judge shall note thereon the filing date and forthwith transmit them to the **office of the clerk**.*

*A court may by **local rule** permit papers to be **filed, signed, or verified** by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes.*

*A paper **filed** by electronic means in compliance with a **local rule** constitutes a written paper for the purpose of applying these rules.*

*The **clerk** shall not refuse to accept for **filing any paper** presented for that purpose solely because it is not presented in proper form as required by these rules or any **local rules** or practices.*

Rule 6: Time

(a) Computation. *In computing any period of time prescribed or allowed by these rules, by the [local rules of any district court](#), by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the [filing of a paper in court](#), a day on which weather or other conditions have made the [office of the clerk of the district court](#) inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.*

As used in this rule and in [Rule 77\(c\)](#), "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.

(b) Enlargement. *When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without [motion](#) or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon [motion](#) made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under [Rules 50\(b\) and \(c\)\(2\)](#), [52\(b\)](#), [59\(b\)](#), [\(d\) and \(e\)](#), and [60\(b\)](#), except to the extent and under the conditions stated in them.*

[(c) Unaffected by Expiration of Term.] (Rescinded Feb. 28, 1966, eff. July 1, 1966)

(d) For Motions--Affidavits. *A [written motion](#), other than one which may be heard *ex parte*, and notice of the hearing thereof shall be [served](#) not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on *ex parte* application. When a [motion](#) is supported by affidavit, the affidavit shall be [served](#) with the [motion](#); and, except as otherwise provided in [Rule 59\(c\)](#), opposing affidavits may be [served](#) not later than 1 day before the hearing, unless the court permits them to be [served](#) at some other time.*

(e) Additional Time After Service Under [Rule 5\(b\)\(2\)\(B\)](#), [\(C\)](#), or [\(D\)](#). *Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the [service](#) of a notice or other paper upon the party and the notice or paper is served upon the party under [Rule 5\(b\)\(2\)\(B\)](#), [\(C\)](#), or [\(D\)](#), 3 days shall be added to the prescribed period.*

Rule 6(a) is amended to acknowledge that weather conditions or other events may render the [clerk's office](#) inaccessible one or more days. Parties who are obliged to [file something with the court](#) during that period should not be penalized if they cannot do so. The amendment conforms to changes made in Federal Rule of Criminal Procedure 45(a), effective August 1, 1982.

The Rule also is amended to extend the exclusion of intermediate Saturdays, Sundays, and legal holidays to the computation of time periods less than 11 days. Under the current version of the Rule, parties bringing [motions](#) under rules with 10-day periods could have as few as 5 working days to prepare their [motions](#). This hardship would be especially acute in the case of [Rules 50\(b\) and \(c\)\(2\)](#), [52\(b\)](#), and [59\(b\)](#), [\(d\)](#), and [\(e\)](#), which may not be enlarged at the discretion of the court. See [Rule 6\(b\)](#). If the exclusion of Saturdays, Sundays, and legal holidays will operate to cause excessive delay in urgent cases, the delay can be obviated by applying to the court to shorten the time, See [Rule 6\(b\)](#).

The additional three days provided by [Rule 6\(e\)](#) is extended to the means of service authorized by the new paragraph (D) added to [Rule 5\(b\)](#), including - with the consent of the person served - service by electronic or other means. The three-day addition is provided as well for service on a person with no known address by leaving a copy with the clerk of the court.

Appendix of Forms

(See [Rule 84](#) [and Notes])

Form 1: [Summons](#)

Form 1-A: [Notice of Lawsuit and Request for Waiver of Service of Summons](#)

Form 1-B: [Waiver of Service of Summons](#)

Form 2: [Allegation of Jurisdiction](#)

Form 3: [Complaint on a Promissory Note](#)

Form 4: [Complaint on an Account](#)

Form 5: [Complaint for Goods Sold and Delivered](#)

Form 6: [Complaint for Money Lent](#)

Form 7: [Complaint for Money Paid by Mistake](#)

Form 8: [Complaint for Money Had and Received](#)

Form 9: [Complaint for Negligence](#)

Form 10: [Complaint for Negligence Where Plaintiff Is Unable To Determine Definitely Whether the Person Responsible Is C. D. or E. F. or Whether Both Are Responsible and Where His Evidence May Justify a Finding of Wilfulness or of Recklessness or of Negligence](#)

Form 11: [Complaint for Conversion](#)

Form 12: [Complaint for Specific Performance of Contract To Convey Land](#)

Form 13: [Complaint on Claim for Debt and To Set Aside Fraudulent Conveyance Under Rule 18\(b\)](#)

Form 14: [Complaint for Negligence Under Federal Employer's Liability Act](#)

Form 15: [Complaint for Damages Under Merchant Marine Act](#)

Form 16: [Complaint for Infringement of Patent](#)

Form 17: [Complaint for Infringement of Copyright and Unfair Competition](#)

Form 18: [Complaint for Interpleader and Declaratory Relief](#)

[Form 18-A: Abrogated Apr. 22, 1993, eff. Dec. 1, 1993]

Form 19: [Motion To Dismiss, Presenting Defenses of Failure To State a Claim, of Lack of Service of Process, of Improper Venue, and of Lack of Jurisdiction Under Rule 12\(b\)](#)

Form 20: [Answer Presenting Defenses Under Rule 12\(b\)](#)

Form 21: [Answer to Complaint Set Forth in Form 8, With Counterclaim for Interpleader](#)

[Form 22: Eliminated Jan. 21, 1963, eff. July 1, 1963]

Form 22-A: [Summons and Complaint Against Third-Party Defendant](#)

Form 22-B: [Motion To Bring in Third-Party Defendant](#)

Form 23: [Motion To Intervene as a Defendant Under Rule 24](#)

Form 24: [Request for Production of Documents, etc., Under Rule 34](#)

Form 25: [Request for Admission Under Rule 36](#)

Form 26: [Allegation of Reason for Omitting Party](#)

[Form 27: Abrogated Dec. 4, 1967, eff. July 1, 1968]

Form 28: [Notice: Condemnation](#)

Form 29: [Complaint: Condemnation](#)

Form 30: [Suggestion of Death Upon the Record Under Rule 25\(a\)\(1\)](#)

Form 31: [Judgment on Jury Verdict](#)

Form 32: [Judgment on Decision by the Court](#)

Form 33: [Notice of Availability of a Magistrate Judge to Exercise Jurisdiction](#)

Form 34: [Consent to Exercise of Jurisdiction by a United States Magistrate Judge](#)

Form 34-A: [Order of Reference](#)

Form 35: [Report of Parties' Planning Meeting](#)

Form Notes

1. The following forms are intended for illustration only. They are limited in number. No attempt is made to furnish a manual of forms. Each form assumes the action to be brought in the Southern District of New York. If the district in which an action is brought has divisions, the division should be indicated in the [caption](#).
2. Except where otherwise indicated each [pleading, motion, and other paper](#) should have a [caption](#) similar to that of the [summons](#), with the designation of the particular paper substituted for the word "Summons". In the [caption](#) of the [summons](#) and in the [caption of the complaint](#) all parties must be named but in other [pleadings](#) and [papers](#), it is sufficient to state the name of the first party on either side, with an appropriate indication of other parties. See Rules [4\(a\)](#), [7\(b\)\(2\)](#), and [10\(a\)](#).
3. In [Form 3](#) and the forms following, the words, "[Allegation of jurisdiction](#)," are used to indicate the appropriate [allegation](#) in [Form 2](#).
4. Each [pleading, motion, and other paper](#) is to be [signed](#) in his individual name by at least one attorney of record ([Rule 11](#)). The attorney's name is to be followed by his address as indicated in [Form 3](#). In forms following [Form 3](#) the [signature](#) and address are not indicated.
5. If a party is not represented by an attorney, the [signature](#) and address of the party are required in place of those of the attorney.

form 1: Summons

United States District Court for the Southern District of New York

Civil Action, File Number _____

A. B., Plaintiff
v. } Summons
C. D., Defendant

To the above-named Defendant:

You are hereby summoned and required to [serve](#) upon _____, plaintiff's attorney, whose address is _____, an [answer](#) to the [complaint](#) which is herewith [served](#) upon you, within 20 days after [service of this summons](#) upon you, exclusive of the day of [service](#). If you fail to do so, [judgment by default](#) will be taken against you for the relief demanded in the [complaint](#).

_____,
Clerk of Court.
[Seal of the U.S. District Court]

Dated _____

(This [summons](#) is issued pursuant to [Rule 4](#) of the [Federal Rules of Civil Procedure](#))

Notes

If the United States or an officer or agency thereof is a defendant, the [time](#) to be inserted as to it is 60 days.

The change in nomenclature conforms to the official designation of a district court and of a court of appeals in Title 28, U.S.C., § 43(a), 132(a); and the more appropriate reference to "United States Court House, Foley Square, City of New York" in [Form 19](#) replaces the outmoded reference.

(Press the back arrow key at the bottom of the page to go back)

-

In the fully functional book this page will display the Rule and Advisory Committee Notes of the word, phrase, or rule from the link clicked. Civil Procedure Hyperlinked includes the entire text of the Federal Rules of Civil Procedure, including the Appendix of Forms and the Supplemental Rules for Certain Admiralty and Maritime Claims. The full version consists of 417 pages.

Please read the [Introduction](#).

Bookmarks on the left contained in the fully functional printable book will include each Rule for quick reference.

Please note that further research into the area of the law being studied will be required in order to gain a complete understanding of each legal principle.

- **The Mnemonics and Definitions Series** of eBooks separately available: Constitution; Crimes; Contracts - includes the UCC; Torts - includes Intentional Torts, Other Torts and Negligence.
- **The Hyperlinked Series** of eBooks separately available: Civil Procedure; Evidence; Corporations; Bouvier Law Dictionary.

Please visit <http://croftware.wisteriamanor.com>.

Contact croftware@wisteriamanor.com for more information.

Subject Outline Section

Article I Scope of Rules--One Form of Action.....	1
Rule 1: Scope and Purpose of Rules.....	2
District Courts of the United States.....	2
Civil in Nature.....	2
Rule 81 Exceptions.....	2
Construed and Administered.....	2
Rule 2: One Form of Action.....	3
Article II Commencement; Service of Process, Pleadings, Motions, Orders.....	4
Rule 3: Commencement of Action.....	5
Rule 4: Summons.....	6
(a) Form.....	7
(b) Issuance.....	8
(c) Service with Complaint; by Whom Made.....	9
(d) Waiver of Service; Duty to Save Costs of Service; Request to Waive.....	10
Purpose of Waiver Request.....	11
(d)(1) Waiver does not Prejudice Rights.....	12
(d)(2) Notice and Request for Waiver.....	13
(d)(3) Waiver Extends the Time for Answer.....	14
(d)(4) Effect of Waiver.....	15
(d)(5) Cost-Shifting Provision.....	16
(e) Service Upon Individuals Within a Judicial District of the United States.....	17
Rule 4.1: Service of Other Process.....	18
Rule 5: Serving and Filing Pleadings and Other Papers.....	19
(a) Service: When Required.....	20
(b) Making Service.....	21
(c) Same: Numerous Defendants.....	22
(d) Filing; Certificate of Service.....	23
(e) Filing with the Court Defined.....	24
Rule 6: Time.....	25
Appendix of Forms.....	26
Form Notes.....	27
form 1: Summons.....	28
Notes.....	28