

Steps in Filing a Complaint

- First, the necessary complaint must be prepared. Make sure you attach the:
 - Exhibits, if applicable
 - Summons
 - Verification from client
- Next, they must be filed with the court
 - Often, you'll have to purchase an index # and pay a filing fee
- Next, each defendant must be properly served with process
- If the defendant does not respond on time, the next step is to have a default judgment entered against the defendant

How Determine Procedures for Service and Filing

- In Federal Court:
 - The rules for procedure are found in the FRCP
- In State Court:
 - Consult your state's civil procedure statutes or rules
- General sources
 - If you are not sure about which form to use, contact the clerk of the court!
 - Very often, for certain motions or petitions, the court has a standard form and will be annoyed if you don't use the court's forms
 - Forms are often available through Blumberg, Findlaw or similar sources
 - Lexis and Westlaw both have forms available

What Should be Included with the Complaint

- Summons
 - This must tell the other party what to do to avoid default
- Civil Cover Sheet
 - Not required in every jurisdiction
 - Federal rules require it
- Request for Waiver of Service
 - The federal rules allow you to do this and some states and the federal system give incentives for agreeing to waiver service
 - This is sent with a “notice of lawsuit,” which is similar to the summons; although the waiver is of course optional to the other party

What Should be Included with the Complaint 2

- Request for Service by a government agent
 - For poor plaintiffs and in some other cases, the government (a US marshal) will do the service for you
- Motion for special appointment to serve process
 - If applicable
- Affidavit of service of summons and complaint
 - This should be done by the process server and kept on file, in case the service is challenged.
 - The affidavit should be specific about who was served and when
- Consent to exercise of jurisdiction, if applicable
- Nongovernment corporate disclosure statement
- Check for filing fee and index number

Filing the Complaint

- The best idea is usually to personally give it to the court records office.
 - Have the clerk stamp a copy and give you a receipt to take back and put in the file
- This can be done by mail as well, in many courts
- E-filing
 - Many federal courts and state courts have developed a system that allows documents to be submitted in .pdf or similar format.
 - Courts often have online systems whereby e-filed documents (and scanned documents that were filed in hard copy) over the internet.
 - Contact the clerk of the court to see if your local court has this feature.

Service of Process

- Unless waived, personal service is required under the federal rules and many states' rules. If you can't achieve personal service, some allowable alternatives include:
 - "leave and mail"
 - "affix and mail"
- In states that allow service by mail, use registered or certified mail.
 - This is best even if you include an acknowledgment form for the other party to sign and return.
- Service on infants or incompetents must generally be made on the defendant and the guardian
 - Some exceptions allow only service on the guardian if the infant is below a certain age.

Service of Process 2

- Service on corporations can usually be done by mailing a copy of the suit to the Department of State's office.
- Service on the government:
 - Federal rules lay out exactly how to serve process on the federal government
 - To serve a county or local agency, just go to that agency's office and serve an employee; or ask the employee whom to serve with process
 - You can usually call a government agency and ask them whom to serve (they usually won't get too offended)
 - Paralegal message boards and internet forums can often be helpful in answering these types of questions

Jurisdiction and Service

- A state generally inherently obtains jurisdiction over a defendant if service occurs in that state.
- Service can be done outside the state of the court if:
 - 1) The service is allowed by the state's long-arm jurisdiction rule
 - In the federal system, service may be made anywhere in the US
 - 2) The exercise of jurisdiction does not offend the due process clause of the Constitution
- In rem jurisdiction is asserted by service of the person with legal "possession" of the property
- If personal service cannot be made in some cases, the rules allow for service by publication
 - In such case, an affidavit of publication, specifically describing what was published and when, should be prepared and held in the file
- Service of motions or later pleadings (not the initial complaint) can usually be done by (certified) mail.

Locating and Serving Defendants

- If you or your process server is having trouble locating a defendant to serve, you might want to try:
 - Internet or physical white pages
 - Sending mail to the last known address with “forwarding address requested”
 - Send mail with “return receipt requested”
 - Contact defendant’s co-workers, landlord, friends, etc.
 - Look at public records like property tax records, voter registration rolls, etc.
 - Check with private companies like utilities, banks, etc.
 - Contact the DMV about car registration records, etc.
 - Place an ad offering a reward for info leading to the service
 - Private investigators
- However, you must make sure you don’t violate debtor protection rules like the Fair Debt Collection Practices Act. Also, NEVER misrepresent who you are or your interests to get information.

Obtaining a Default Judgment

- Step 1: File a request of the clerk of the court to enter a default. This requires:
 - An affidavit that defendant was served with the summons and complaint and that
 - The defendant has failed to respond to the summons within the prescribed time period
- Step 2: File a request for the default judgment itself
- An affidavit explaining what the amount of the default judgment should be should also be filed.
 - The court won't award an amount, even in default, just because that's the number you put in the complaint.
- A default judgment can often be set aside by motion of the defendant based on excusable neglect, etc.
 - Courts don't like settling cases based on defaults