

1 **Rule 4. Process.**

2 **(a) Signing of summons.** The summons must be signed and issued by the plaintiff or  
3 the plaintiff's attorney. Separate summonses may be signed and issued.

4 **(b) Time of service.** Unless the summons and complaint are accepted, a copy of the  
5 summons and complaint in an action commenced under Rule 3(a)(1) must be served no  
6 later than 120 days after the complaint is filed, unless the court orders a different period  
7 under Rule 6. If the summons and complaint are not timely served, the action against  
8 the unserved defendant may be dismissed without prejudice on motion of any party or  
9 on the court's own initiative.

10 **(c) Contents of summons.**

11 (1) The summons must:

12 (A) contain the name and address of the court, the names of the parties to the  
13 action, and the county in which it is brought;

14 (B) be directed to the defendant;

15 (C) state the name, address and telephone number of the plaintiff's attorney, if  
16 any, and otherwise the plaintiff's address and telephone number;

17 (D) state the time within which the defendant is required to answer the  
18 complaint in writing;

19 (E) notify the defendant that in case of failure to answer in writing, judgment by  
20 default will be entered against the defendant; ~~and~~

21 (F) state either that the complaint is on file with the court or that the complaint  
22 will be filed with the court within 10 days after service; and

23 (G) include the bilingual notice set forth in the form summons approved by the  
24 Utah Judicial Council.

25 (2) If the action is commenced under Rule 3(a)(2), the summons must also:

26 (A) state that the defendant need not answer if the complaint is not filed within  
27 10 days after service; and

28 (B) state the telephone number of the clerk of the court where the defendant may  
29 call at least 14 days after service to determine if the complaint has been filed.

30 (3) If service is by publication, the summons must also briefly state the subject  
31 matter and the sum of money or other relief demanded, and that the complaint is on  
32 file with the court.

33 **(d) Methods of service.** The summons and complaint may be served in any state or  
34 judicial district of the United States. Unless service is accepted, service of the summons  
35 and complaint must be by one of the following methods:

36 **(1) Personal service.** The summons and complaint may be served by any person 18  
37 years of age or older at the time of service and not a party to the action or a party's  
38 attorney. If the person to be served refuses to accept a copy of the summons and  
39 complaint, service is sufficient if the person serving them states the name of the  
40 process and offers to deliver them. Personal service must be made as follows:

41 (A) Upon any individual other than one covered by paragraphs (d)(1)(B),  
42 (d)(1)(C) or (d)(1)(D), by delivering a copy of the summons and complaint to the  
43 individual personally, or by leaving them at the individual's dwelling house or  
44 usual place of abode with a person of suitable age and discretion who resides  
45 there, or by delivering them to an agent authorized by appointment or by law to  
46 receive process;

47 (B) Upon a minor under 14 years old by delivering a copy of the summons and  
48 complaint to the minor and also to the a parent or guardian of the minor's father,  
49 ~~mother, or guardian~~ or, if none can be found within the state, then to any person  
50 having the care and control of the minor, or with whom the minor resides, or by  
51 whom the minor is employed;

52 (C) Upon an individual judicially declared to be incapacitated, of unsound mind,  
53 or incapable of conducting the individual's own affairs, by delivering a copy of  
54 the summons and complaint to the individual and to the guardian or conservator  
55 of the individual if one has been appointed; the individual's legal representative  
56 if one has been appointed, and, in the absence of a guardian, conservator, or legal  
57 representative, to the person, if any, who has care, custody, or control of the  
58 individual;

59 (D) Upon an individual incarcerated or committed at a facility operated by the  
60 state or any of its political subdivisions, by delivering a copy of the summons  
61 and complaint to the person who has the care, custody, or control of the  
62 individual, or to that person's designee or to the guardian or conservator of the  
63 individual if one has been appointed. The person to whom the summons and  
64 complaint are delivered must promptly deliver them to the individual;

65 (E) Upon a corporation not otherwise provided for in this rule, a limited liability  
66 company, a partnership, or an unincorporated association subject to suit under a  
67 common name, by delivering a copy of the summons and complaint to an officer,  
68 a managing or general agent, or other agent authorized by appointment or law to  
69 receive process and by also mailing a copy of the summons and complaint to the  
70 defendant, if the agent is one authorized by statute to receive process and the  
71 statute so requires. If no officer or agent can be found within the state, and the  
72 defendant has, or advertises or holds itself out as having, a place of business  
73 within the state or elsewhere, or does business within this state or elsewhere,  
74 then upon the person in charge of the place of business;

75 (F) Upon an incorporated city or town, by delivering a copy of the summons and  
76 complaint as required by statute, or in the absence of a controlling statute, to the  
77 recorder;

78 (G) Upon a county, by delivering a copy of the summons and complaint as  
79 required by statute, or in the absence of a controlling statute, to the county clerk;

80 (H) Upon a school district or board of education, by delivering a copy of the  
81 summons and complaint as required by statute, or in the absence of a controlling  
82 statute, to the superintendent or administrator of the board;

83 (I) Upon an irrigation or drainage district, by delivering a copy of the summons  
84 and complaint as required by statute, or in the absence of a controlling statute, to  
85 the president or secretary of its board;

86 (J) Upon the state of Utah or its department or agency by delivering a copy of the  
87 summons and complaint to the attorney general and any other person or agency  
88 required by statute to be served; and

89 (K) Upon a public board, commission or body by delivering a copy of the  
90 summons and complaint as required by statute, or in the absence of a controlling  
91 statute, to any member of its governing board, or to its executive employee or  
92 secretary.

93 **(2) Service by mail or commercial courier service.**

94 (A) The summons and complaint may be served upon an individual other than  
95 one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier  
96 service in any state or judicial district of the United States provided the  
97 defendant signs a document indicating receipt.

98 (B) The summons and complaint may be served upon an entity covered by  
99 paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in  
100 any state or judicial district of the United States provided defendant's agent  
101 authorized by appointment or by law to receive service of process signs a  
102 document indicating receipt.

103 (C) Service by mail or commercial courier service shall be complete on the date  
104 the receipt is signed as provided by this rule.

105 **(3) Acceptance of service.**

106           **(A) Duty to avoid expenses.** All parties have a duty to avoid unnecessary  
107 expenses of serving the summons and complaint.

108           **(B) Acceptance of service by party.** Unless the person to be served is a  
109 minor under 14 years old or an individual judicially declared to be incapacitated,  
110 of unsound mind, or incapable of conducting the individual's own affairs, a  
111 party may accept service of a summons and complaint by signing a document  
112 that acknowledges receipt of the summons and complaint.

113               **(i) Content of proof of electronic acceptance.** If acceptance is obtained  
114 electronically, the proof of acceptance must demonstrate on its face that the  
115 electronic signature is attributable to the party accepting service and was  
116 voluntarily executed by the party. The proof of acceptance must demonstrate  
117 that the party received readable copies of the summons and complaint prior  
118 to signing the acceptance of service.

119               **(ii) Duty to avoid deception.** A request to accept service must not be  
120 deceptive, including stating or implying that the request to accept service  
121 originates with a public servant, peace officer, court, or official government  
122 agency. A violation of this paragraph may nullify the acceptance of service  
123 and could subject the person to criminal penalties under applicable Utah law.

124           **(C) Acceptance of service by attorney for party.** An attorney may accept service  
125 of a summons and complaint on behalf of the attorney's client by signing a  
126 document that acknowledges receipt of the summons and complaint.

127           **(D) Effect of acceptance, proof of acceptance.** A person who accepts service of  
128 the summons and complaint retains all defenses and objections, except for  
129 adequacy of service. Service is effective on the date of the acceptance. Filing the  
130 acceptance of service with the court constitutes proof of service under Rule 4(e).

131           **(4) Service in a foreign country.** Service in a foreign country must be made as  
132 follows:

133 (A) by any internationally agreed means reasonably calculated to give notice,  
134 such as those means authorized by the Hague Convention on the Service Abroad  
135 of Judicial and Extrajudicial Documents;

136 (B) if there is no internationally agreed means of service or the applicable  
137 international agreement allows other means of service, provided that service is  
138 reasonably calculated to give notice:

139 (i) in the manner prescribed by the law of the foreign country for service in  
140 that country in an action in any of its courts of general jurisdiction;

141 (ii) as directed by the foreign authority in response to a letter of request  
142 issued by the court; or

143 (iii) unless prohibited by the law of the foreign country, by delivering a copy  
144 of the summons and complaint to the individual personally or by any form of  
145 mail requiring a signed receipt, addressed and dispatched by the clerk of the  
146 court to the party to be served; or

147 (C) by other means not prohibited by international agreement as may be directed  
148 by the court.

149 **(5) Other service.**

150 (A) If the identity or whereabouts of the person to be served are unknown and  
151 cannot be ascertained through reasonable diligence, if service upon all of the  
152 individual parties is impracticable under the circumstances, or if there is good  
153 cause to believe that the person to be served is avoiding service, the party  
154 seeking service may file a motion to allow service by some other means. An  
155 affidavit or declaration supporting the motion must set forth the efforts made to  
156 identify, locate, and serve the party, or the circumstances that make it  
157 impracticable to serve all of the individual parties.

158 (B) If the motion is granted, the court will order service of the complaint and  
159 summons by means reasonably calculated, under all the circumstances, to

160 apprise the named parties of the action. The court's order must specify the  
161 content of the process to be served and the event upon which service is complete.  
162 Unless service is by publication, a copy of the court's order must be served with  
163 the process specified by the court.

164 (C) If the summons is required to be published, the court, upon the request of the  
165 party applying for service by other means, must designate a newspaper of  
166 general circulation in the county in which publication is required.

167 **(e) Proof of service.**

168 (1) The person effecting service must file proof of service stating the date, place, and  
169 manner of service, including a copy of the summons. If service is made by a person  
170 other than by an attorney, sheriff, constable, United States Marshal, or by the  
171 sheriff's, constable's or marshal's deputy, the proof of service must be by affidavit or  
172 unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn  
173 Declarations Act.

174 (2) Proof of service in a foreign country must be made as prescribed in these rules  
175 for service within this state, or by the law of the foreign country, or by order of the  
176 court.

177 (3) When service is made pursuant to paragraph(d)(4)(C), proof of service must  
178 include a receipt signed by the addressee or other evidence of delivery to the  
179 addressee satisfactory to the court.

180 (4) Failure to file proof of service does not affect the validity of the service. The court  
181 may allow proof of service to be amended.

182

183 **~~Advisory Committee Notes~~**

184 ~~Rule 4 constitutes a substantial change from prior practice. The rule modernizes and~~  
185 ~~simplifies procedure relating to service of process. Although this rule and Rule 3 retain~~

186 the ten-day summons procedure for commencement of actions, this rule endeavors to  
187 make practice under the ten-day summons provision more consistent with practice in  
188 actions commenced by the filing of a complaint. The rule retains portions of prior Rule  
189 4, adopts portions of the present federal Rule 4, and adopts entirely new language in  
190 other areas. The rule eliminates the statement (appearing in paragraph (m) of the prior  
191 rule) that all writs and process may be served by any constable of the court. In the  
192 committee's view, this rule does not properly deal with the question of who may serve  
193 types of process other than the summons and complaint. In recommending the  
194 elimination of paragraph (m), the committee did not intend to change the law  
195 governing eligibility to serve such other process.

196 Paragraph (a). This paragraph eliminates the prior rule's reference to the issuance of  
197 summonses. See paragraph (b). Otherwise the paragraph is identical to the former  
198 paragraph (a).

199 Paragraph (b). This paragraph, a substantial change from the prior rule, requires that in  
200 an action commenced under Rule 3(a)(1), the summons, together with a copy of the  
201 complaint, must be served within 120 days of the filing of the complaint. The time  
202 period was borrowed from Rule 4(j), Federal Rules of Civil Procedure.

203 Paragraph (c). This paragraph makes minor revisions to the corresponding paragraph  
204 of the prior rule. In addition to data historically required to appear in the summons, the  
205 address of the court and information concerning the plaintiff or plaintiff's attorney are  
206 also required.

207 Paragraph (d). In prescribing the persons who may serve process, this paragraph  
208 eliminates the prior rule's distinction between in-state and out-of-state service. The  
209 paragraph is consistent with other changes in the rule designed to simplify and unify  
210 practice for in-state and out-of-state service. In order to be eligible to serve a summons  
211 or complaint, persons who are not sheriffs or other law enforcement personnel must be  
212 at least 18 years of age at the time of service. For eligibility to make service in a foreign  
213 country, see paragraph (d)(3). Subparagraph (d)(1)(A) presents the general rule for



214 personal service on individuals who are not infants, incompetent, or incarcerated.  
215 Subparagraph (B) deals with service on infants and subparagraph (C) with service on  
216 incompetent persons. Subparagraphs (A), (B) and (C) are patterned after Rule 4(e),  
217 Federal Rules of Civil Procedure. Subparagraph (D) deals with service on persons who  
218 are incarcerated or committed to the custody of a state institution. Subparagraph (E)  
219 deals with service on business entities. Subparagraphs (F) through (I) change and  
220 modernize service on political subdivisions of the state. Subparagraphs (J) and (K)  
221 provide for service on the state and its departments, agencies, boards and commissions  
222 with only minor changes from the prior rule. Subparagraph (d)(2) adds a provision for  
223 service by mail or commercial courier service within any judicial district of the United  
224 States. The term "mail" refers to services provided by the United States Postal Service.  
225 The term "commercial courier service" refers to businesses that provide for the delivery  
226 of documents. Examples of "commercial courier service" include Federal Express and  
227 United Parcel Service. Methods of service by mail or commercial courier service must  
228 provide for a document indicating receipt. Subparagraphs (A) and (B) specify who must  
229 sign the document indicating receipt. For service under Subparagraph (d)(2) to be  
230 effective, the court must be clearly convinced that the proper person signed the  
231 document indicating receipt. Infants or incompetent persons may not be served by mail  
232 or commercial courier service. Subparagraph (C) details when service by mail or  
233 commercial courier service is complete.

234 Paragraph (d)(3). This paragraph provides several alternative means by which service  
235 must be made in foreign countries and provides for proof of such service.

236 Paragraph (d)(4). This paragraph replaces most of paragraph (f) of the prior rule. It is  
237 designed to permit alternative means of service where the identity or whereabouts of  
238 the person to be served is unknown, where personal service is impracticable, or where a  
239 party avoids personal service. Under the circumstances identified in the rule, this  
240 paragraph permits the court to fashion means of service reasonably calculated to  
241 apprise the parties of the pendency of the action. Use of this provision is not limited to

242 ~~actions traditionally considered in rem or quasi in rem. See Carlson v. Bos, 740 P.2d~~  
243 ~~1269, 1272 (Utah 1987). The present rule eliminates specific mention of service by~~  
244 ~~telegraph or telephone (in paragraph (1) of the prior rule) since such service could be~~  
245 ~~ordered under this paragraph if appropriate. The court's order of substituted service~~  
246 ~~must specify the content of service and the event or events as of which service will be~~  
247 ~~deemed complete. A copy of the order must itself be served so that the party served will~~  
248 ~~be able to determine the sufficiency of service and the time as of which his or her~~  
249 ~~response is due.~~

250 ~~Paragraph (e). This paragraph replaces paragraph (g) in the prior rule. It requires proof~~  
251 ~~of service to be filed "promptly" and in any event before a responsive pleading is due.~~  
252 ~~The rule eliminates failure to file proof of service as a basis for challenging the validity~~  
253 ~~of service. The rule contains specific requirements for proof of service depending upon~~  
254 ~~who serves and what method of service is used. If the summons and complaint are~~  
255 ~~served by mail or commercial courier service, subparagraph (1) requires the receipt~~  
256 ~~signed by defendant or defendant's agent to be included in the proof of service.~~

257 ~~Paragraph (f) adds an option for a plaintiff to request a defendant to waive service. This~~  
258 ~~provision is similar to federal Rule (4)(d). The defendant is required to return the~~  
259 ~~waiver of service within 20 days (30 days for a defendant outside the United States)~~  
260 ~~from the date the request for waiver is sent. The rule grants a defendant who waives~~  
261 ~~service additional time to file a response to the complaint. A defendant who does not~~  
262 ~~return the request for waiver of service will be assessed plaintiff's actual costs in~~  
263 ~~effecting service under other provisions of this rule.~~

#### 264 ~~2016 Amendments~~

265 ~~Paragraph (d)(3) contemplates delivery and acceptance of the summons and complaint~~  
266 ~~by various methods, including electronic delivery and signature. Elimination of the~~  
267 ~~express procedure for seeking waiver of service under paragraph (f) does not eliminate~~  
268 ~~the parties' ability to agree to accept service under paragraph (d)(3).~~