

1 **Rule 4. Process.**

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

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

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

10 (c)(1) The summons must:

11 (c)(1)(A) contain the name and address of the court, the names of the parties to the action,
12 and the county in which it is brought;

13 (c)(1)(B) be directed to the defendant;

14 (c)(1)(C) state the name, address and telephone number of the plaintiff's attorney, if any, and
15 otherwise the plaintiff's address and telephone number;

16 (c)(1)(D) state the time within which the defendant is required to answer the complaint in
17 writing;

18 (c)(1)(E) notify the defendant that in case of failure to answer in writing, judgment by default
19 will be entered against the defendant; and

20 (c)(1)(F) state either that the complaint is on file with the court or that the complaint will be
21 filed with the court within 10 days after service.

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

23 (c)(2)(A) state that the defendant need not answer if the complaint is not filed within 10 days
24 after service; and

25 (c)(2)(B) state the telephone number of the clerk of the court where the defendant may call at
26 least 14 days after service to determine if the complaint has been filed.

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

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

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

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

42 (d)(1)(B) Upon a minor under 14 years old by delivering a copy of the summons and
43 complaint to the minor and also to the minor's father, mother, or guardian or, if none can be found
44 within the state, then to any person having the care and control of the minor, or with whom the
45 minor resides, or by whom the minor is employed;

46 (d)(1)(C) Upon an individual judicially declared to be incapacitated, of unsound mind, or
47 incapable of conducting the individual's own affairs, by delivering a copy of the summons and
48 complaint to the individual and to the guardian or conservator of the individual if one has been
49 appointed; the individual's legal representative if one has been appointed, and, in the absence of
50 a guardian, conservator, or legal representative, to the person, if any, who has care, custody, or
51 control of the individual;

52 (d)(1)(D) Upon an individual incarcerated or committed at a facility operated by the state or
53 any of its political subdivisions, by delivering a copy of the summons and complaint to the person
54 who has the care, custody, or control of the individual, or to that person's designee or to the
55 guardian or conservator of the individual if one has been appointed. The person to whom the
56 summons and complaint are delivered must promptly deliver them to the individual;

57 (d)(1)(E) Upon a corporation not otherwise provided for in this rule, a limited liability company,
58 a partnership, or an unincorporated association subject to suit under a common name, by
59 delivering a copy of the summons and complaint to an officer, a managing or general agent, or
60 other agent authorized by appointment or law to receive process and by also mailing a copy of
61 the summons and complaint to the defendant, if the agent is one authorized by statute to receive
62 process and the statute so requires. If no officer or agent can be found within the state, and the
63 defendant has, or advertises or holds itself out as having, a place of business within the state or
64 elsewhere, or does business within this state or elsewhere, then upon the person in charge of the
65 place of business;

66 (d)(1)(F) Upon an incorporated city or town, by delivering a copy of the summons and
67 complaint as required by statute, or in the absence of a controlling statute, to the recorder;

68 (d)(1)(G) Upon a county, by delivering a copy of the summons and complaint as required by
69 statute, or in the absence of a controlling statute, to the county clerk;

70 (d)(1)(H) Upon a school district or board of education, by delivering a copy of the summons
71 and complaint as required by statute, or in the absence of a controlling statute, to the
72 superintendent or administrator of the board;

73 (d)(1)(I) Upon an irrigation or drainage district, by delivering a copy of the summons and
74 complaint as required by statute, or in the absence of a controlling statute, to the president or
75 secretary of its board;

76 (d)(1)(J) Upon the state of Utah or its department or agency by delivering a copy of the
77 summons and complaint to the attorney general and any other person or agency required by
78 statute to be served; and

79 (d)(1)(K) Upon a public board, commission or body by delivering a copy of the summons and
80 complaint as required by statute, or in the absence of a controlling statute, to any member of its
81 governing board, or to its executive employee or secretary.

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

83 (d)(2)(A) The summons and complaint may be served upon an individual other than one
84 covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state or
85 judicial district of the United States provided the defendant signs a document indicating receipt.

86 (d)(2)(B) The summons and complaint may be served upon an entity covered by paragraphs
87 (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district of
88 the United States provided defendant's agent authorized by appointment or by law to receive
89 service of process signs a document indicating receipt.

90 (d)(2)(C) Service by mail or commercial courier service shall be complete on the date the
91 receipt is signed as provided by this rule.

92 **(d)(3) Acceptance of service.**

93 **(d)(3)(A) Duty to avoid expenses.** All parties have a duty to avoid unnecessary expenses of
94 serving the summons and complaint.

95 **(d)(3)(B) Acceptance of service by party.** Unless the person to be served is a
96 minor under 14 years old or an individual judicially declared to be incapacitated, of unsound mind,
97 or incapable of conducting the individual's own affairs, a party may accept service of a summons
98 and complaint by signing a document that acknowledges receipt of the summons and complaint.

99 **(d)(3)(C) Acceptance of service by attorney for party.** An attorney may accept service of a
100 summons and complaint on behalf of the attorney's client by signing a document that acknowledges
101 receipt of the summons and complaint.

102 **(d)(3)(D) Effect of acceptance, proof of acceptance.** A person who accepts service of the
103 summons and complaint retains all defenses and objections, except for adequacy of service. Service
104 is effective on the date of the acceptance. Filing the acceptance of service with the court constitutes
105 proof of service under Rule 4(e).

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

107 (d)(4)(A) by any internationally agreed means reasonably calculated to give notice, such as
108 those means authorized by the Hague Convention on the Service Abroad of Judicial and
109 Extrajudicial Documents;

110 (d)(4)(B) if there is no internationally agreed means of service or the applicable international
111 agreement allows other means of service, provided that service is reasonably calculated to give
112 notice:

113 (d)(4)(B)(i) in the manner prescribed by the law of the foreign country for service in that
114 country in an action in any of its courts of general jurisdiction;

115 (d)(4)(B)(ii) as directed by the foreign authority in response to a letter of request issued
116 by the court; or

117 (d)(4)(B)(iii) unless prohibited by the law of the foreign country, by delivering a copy of the
118 summons and complaint to the individual personally or by any form of mail requiring a signed
119 receipt, addressed and dispatched by the clerk of the court to the party to be served; or

120 (d)(4)(C) by other means not prohibited by international agreement as may be directed by the
121 court.

122 **(d)(5) Other service.**

123 (d)(5)(A) If the identity or whereabouts of the person to be served are unknown and cannot
124 be ascertained through reasonable diligence, if service upon all of the individual parties is
125 impracticable under the circumstances, or if there is good cause to believe that the person to be
126 served is avoiding service, the party seeking service may file a motion to allow service by some
127 other means. An affidavit or declaration supporting the motion must set forth the efforts made to
128 identify, locate, and serve the party, or the circumstances that make it impracticable to serve all of
129 the individual parties.

130 (d)(5)(B) If the motion is granted, the court will order service of the complaint and summons
131 by means reasonably calculated, under all the circumstances, to apprise the named parties of the
132 action. The court's order must specify the content of the process to be served and the event upon
133 which service is complete. Unless service is by publication, a copy of the court's order must be
134 served with the process specified by the court.

135 (d)(5)(C) If the summons is required to be published, the court, upon the request of the party
136 applying for service by other means, must designate a newspaper of general circulation in the
137 county in which publication is required.

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

139 (e)(1) The person effecting service must file proof of service stating the date, place, and manner of
140 service, including a copy of the summons. If service is made by a person other than by an attorney,
141 sheriff, constable, United States Marshal, or by the sheriff's, constable's or marshal's deputy, the
142 proof of service must be by affidavit or ~~declaration under penalty of Utah Code~~
143 ~~Section 78B-5-705~~ unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn
144 Declarations Act.

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

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

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

152 **Advisory Committee Notes**

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