

- © **Two completed copies of the Waiver of Service of Summons (to be signed by the defendant);**
  
- (D) **One pre-paid, self-addressed envelope (addressed to you).**

If the defendant agrees to waive service of the summons, s/he will complete the waiver of service form by signing it and returning it to you within thirty (30) days (or sixty (60) days if the defendant is located in a foreign country) of the date you mailed the papers to the defendant. You must then send the Waiver of Service of Summons form signed by the defendant to the *Pro Se* Office for filing. By waiving service of the summons, the defendant will not have to respond to complaint before sixty (60) days (or ninety (90) days if the defendant is located in a foreign country) of the date of the waiver.

If you do not receive a Waiver of Service of Summons form signed by the defendant within the time allowed, you **MUST** serve the defendant with the summons and complaint by one of the other allowed methods and you may later seek any costs for serving the defendant.



#### **Using the United States Marshals Service to serve your defendant(s)**

The United States Marshals Service will serve the summons and complaint on your defendant(s) if you have been granted *in forma pauperis* status under 28 U.S.C. § 1915 or if the Judge in your case orders them to serve your defendant(s) free of charge. Thus, if you have paid the filing fee when you submitted your complaint for filing, the Marshals will not serve your defendant(s) unless ordered to do so by the Judge.

If you wish to have the United States Marshals Service serve your defendant(s), you should note that the Marshals frequently experience delays in serving defendants because of the high volume of service requests they handle. Thus, if you have the ability to serve your defendant(s) by using a trusted family member, friend, professional process server or waiver of service form, you may wish to do so. If you choose to use the United States Marshals Service to serve your defendant(s), you must send the following materials to the Marshals as soon as possible to avoid substantial delays. Do not send your materials to the *Pro Se* Office, but rather send them directly to the Marshals at:

**United States Marshal's Office - S.D.N.Y.  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, 4<sup>th</sup> Floor  
New York, New York 10007**

- (A) The **original summons** (with the raised seal of the Court on it). The original summons will be filed with the Court after the United States Marshals Service has completed service;
- (B) The **certified copy of the *in forma pauperis* application or order granting *in forma pauperis*** (with the raised seal of the Court on it);
- (C) The **memorandum from the *Pro Se* Clerk to the United States Marshals Service** (include only if you are suing government officials);
- (D) **One set of the following papers for each defendant:**
1. One copy of the summons;
  2. One copy of the complaint;
  3. One copy of the *in forma pauperis* application or order granting *in forma pauperis*;
  4. One copy of the Local Rule 33.2 Discovery Requests for prisoners (if applicable);
  5. A completed USM-285 Marshal Service form (instructions for completing this form are included).
- (E) The **memorandum from the *Pro Se* Clerk to the United States Marshals Service** (regarding extra copies for service);
- (F) **Two additional copies of the summons, complaint and *in forma pauperis* application or order granting *in forma pauperis*** in the event the United States Marshals Service needs to use an alternate method of service.
- \* If you fail to send the required materials, as listed above, to the United States Marshals Service, the Marshals will return your entire package to you without effecting service. For instance, if you fail to include the correct number of copies of your complaint, a completed USM-285 Marshals Service form, or the original summons (with the raised seal of the Court), your materials will be returned to you and you will have to re-send the correct materials to the Marshals.
- \* If any defendant is a municipal or state official, you must include an additional copy of the summons, complaint and *in forma pauperis* application or order granting *in forma pauperis* for each defendant as required by Rule 4(j).
- \* If any defendant is a federal officer, agency, or the United States of America, you must include an additional **three (3) copies** of the summons, complaint and *in forma*

*pauperis* application or order granting *in forma pauperis* for each federal defendant.

- \* If Local Rule 33.2 applies, you must include an additional two (2) copies of the summons, complaint and *in forma pauperis* application or order granting *in forma pauperis*.
- \* The United States Marshals Service **CANNOT** serve a **JOHN DOE** defendant. You first must ascertain the name of any John Doe defendant(s) and amend your complaint to include the real identity in the caption of your complaint. Enclosed are instructions regarding John Doe defendants and amending your complaint.
- \* The United States Marshals Service **CANNOT** serve a **foreign state or country**.

Typically, the United States Marshals Service will serve the defendant(s) by mail before attempting personal service. If the defendant(s) does not return the acknowledgment of service, the Marshals will attempt to serve the defendant(s) again by personal service. Once the Marshals have completed service, you will receive a "Notice of Service" (the yellow carbon copy) by mail and the Marshals will attach proof of service to the original summons and file it with the Court. If you hand-deliver your materials to the United States Marshal's Office at the Courthouse, the Marshals will give you an "Acknowledgment of Receipt" (the green carbon copy) to confirm only that they have received your materials. If you mail your materials to the Marshals, you will not receive the green "Acknowledgment of Receipt".

#### **What happens if the Judge issues a Rule 4 Order?**

The Judge assigned to your case may issue an Order advising you that you have 120 days to serve your defendant(s) and that if you fail to do so, your case will be dismissed. The Judge may ask you to explain why service has not yet been completed. You should respond to such an Order by stating what steps, if any, you have taken to serve your defendants, including when you sent your papers to the United States Marshals Service, and explaining any delays you may have experienced in serving your defendants. You must respond to the Order, and may do so in the form of a letter to the Judge, which you must mail to the *Pro Se* Office so it can be forwarded to the Judge.

#### **What happens if the defendant(s) does not respond to service?**

If a defendant has not answered, moved to dismiss your complaint or sought an extension of time to respond to your complaint within the time allowed, you may be able to

seek a default judgment against that defendant. A default judgment is a judgment in favor of the plaintiff and has the same effect as a judgment entered after a motion or jury verdict. You, however, cannot enter a default judgment based on service by certified mail. Therefore, before seeking a default judgment, you must ensure that the defendant is served by personal service and that the proof of service is filed with the Court.

### **IMPORTANT**

If you have a change of address before you send your papers to the United States Marshals Service for service, you **MUST** notify the *Pro Se* Office in writing of your change of address and include one copy of this letter for each of your defendants with the materials you send to the United States Marshals Service. If you have a change of address but have already served your defendant(s) with a copy of your complaint, you **MUST** notify the *Pro Se* Office **AND** your defendant(s) (or their attorney(s)) of your change of address.

If you have a question regarding the materials you have sent to the United States Marshals Service, you may contact them directly at (212) 331-7117.

### **Instructions for completing the USM-285 Marshals Service form**

You must include one completed USM-285 Marshals Service form for each defendant to be served. The USM-285 Marshals Service form must be completed accurately and in its entirety. If you fail to do so, the Marshals will not serve your papers.

Attached is a copy of the USM-285 Marshals Service form. Each space is marked with a letter. The instructions below explain what to write in each lettered space.

- A. Write your name as the plaintiff here. If there is more than one plaintiff, write the first plaintiff's name and then "et al."
- B. Write the docket number of the case, with the Judge's initials here. For example, you would write "07 Civ.12345(KMW)."
- C. Write the name of the first defendant in the lawsuit here. For example, suppose you are suing Warden Jones, Albert Johnson and Sgt. Richard Anderson. The name which goes in this space is Warden Jones (even if this particular form is being used to serve Sgt. Anderson).
- D. Write the title of the papers you want the Marshals to serve here. If the Marshal is to serve the summons and complaint, you should write the words

"summons and complaint."

- E.** Write the name of the particular defendant which you want the Marshals to serve with this form, including any titles the defendant may have. For example, in the lawsuit described in C (above), the name which would go here would be "Sgt. Richard Anderson." Another Marshal Service form would have "Warden Jones" in this space, and another Marshal Service form would have "Albert Johnson" here.
- F.** Write the street address where the Marshals can serve this particular defendant. You may **not** write a Post Office Box address here. For example, in the lawsuit described in C (above), the address which would go here would be the address where the Marshals should serve Sgt. Richard Anderson.
- G.** Write your name and address here. The Marshals will mail their "Notice of Service" (informing you of their attempts to serve your defendant) to you at the address listed here. If you are a prisoner, you **must** include your ID number.
- H.** Write the number of copies of the papers to be served by the Marshals with this Marshals Service form. Usually this will be "1". In some cases - for example, cases in which you are suing a federal agency - the number will be greater. If you are unsure what number to write here, leave this space blank.
- I.** Write the number of your defendants who can be identified at this time. For example, suppose you are suing Warden Jones, C.O. John Doe and C.O. John Doe #2 (John Doe is a fictitious name for an unidentified defendant). You would write "1" here because there is only one identified defendant for the Marshals to serve now. Later, after you identify the other defendants, you may submit new Marshals Service forms for the new defendants. If you are unsure what number to write here, leave this space blank.
- J.** Check this box only if any of your defendants are the United States, a federal agency or a federal official. If you are unsure if you should check this box, do not check it.
- K.** Write any special instructions to help the Marshals effect service here, including any alternate addresses, the defendant's telephone number or an estimated time that the defendant will be available to receive service. For example, in the lawsuit described in C (above), if Sgt. Richard Anderson was recently transferred from C Block to D Block, you should include this information here. In addition, if you know that Sgt. Anderson works the 8am -

3pm shift, you should include this information here.

- L. Sign your name here.
- M. Check the box for "plaintiff."
- N. Write your telephone number here. If you have no telephone number write "none."
- O. Write the date that you prepare the form here.


**Why did the United States Marshals Service fail to serve your defendant(s)?**

- You failed to include one or more of the required documents (*i.e.* the original summons (with the raised seal of the Court on it), the certified copy of the *in forma pauperis* order (with the raised seal of the Court on it) or the proper number of copies of the complaint).
- You failed to include a completed USM-285 Marshals Service form for each defendant or failed to include the proper information on the USM-285 Marshals Service form.
- You listed the defendant's address as a post office box instead of a street address. If you are suing a prison official, use the name of the institution and its street address. If you do not know the street address, you may use the City and State along with the name of the institution.
- You failed to include sufficient information regarding your defendant's identity. If you are suing a corrections officer or a police officer, the Marshals may not be able to serve the defendant without his or her full name, even if you have his or her badge number. Likewise, the Marshals may not be able to serve the defendant without his or her badge number, even if you have his or her name. For instance, Correctional Officer Williams may not sufficiently identify your defendant, especially if there are 20 correctional officers named Williams working at your facility. If your defendant is not sufficiently identified, you may use the discovery process to get more information regarding your defendant's identity.
- Your defendant is a "John Doe." If you are suing a "John Doe." you must determine the defendant's identity before sending papers to the Marshals. You should review the enclosed information regarding John Doe defendants and amending your complaint to correct this.

U.S. Department of Justice  
United States Marshals Service

**PROCESS RECEIPT AND RETURN**  
See Instructions for "Service of Process by the U.S. Marshal"  
on the reverse of this form.

PLAINTIFF _____ A _____	COURT CASE NUMBER _____ B _____
DEFENDANT _____ C _____	TYPE OF PROCESS _____ D _____

**SERVE**  **AT**

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN \_\_\_\_\_ E \_\_\_\_\_

ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) \_\_\_\_\_ F \_\_\_\_\_

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:

_____ G _____ _____ _____	Number of process to be served with this Form - 285 _____ H _____
	Number of parties to be served in this case _____ I _____
	Check for service on U.S.A. _____ J _____

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service): \_\_\_\_\_ K \_\_\_\_\_

Fold

Signature of Attorney or other Originator requesting service on behalf of: \_\_\_\_\_ L \_\_\_\_\_

PLAINTIFF  
 DEFENDANT

TELEPHONE NUMBER \_\_\_\_\_ N \_\_\_\_\_

DATE \_\_\_\_\_ O \_\_\_\_\_

M

**SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE**

I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted)	Total Process	District of Origin	District to Serve	Signature of Authorized USMS Deputy or Clerk	Date
	No. _____	No. _____	No. _____		

I hereby certify and return that I  have personally served,  have legal evidence of service,  have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above) \_\_\_\_\_

Address (complete only if different than shown above) \_\_\_\_\_

A person of suitable age and discretion then residing in the defendant's usual place of abode.

Date of Service	Time	am
		pm
Signature of U.S. Marshal or Deputy		

Service Fee	Total Mileage Charges (including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal or	Amount of Refund
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REMARKS:

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**Plaintiff's Checklist of Documents to be sent to the United States Marshals Service**

If you were granted *in forma pauperis* and are using the United States Marshals Service to serve your defendants, you must send the following documents to the Marshals:

- \_\_\_\_\_ Original summons (with the raised seal of the Court on it);
- \_\_\_\_\_ Copies of the summons (one for each defendant);
- \_\_\_\_\_ Certified copy of the *in forma pauperis* application or order granting *in forma pauperis* (with the raised seal of the Court on it);
- \_\_\_\_\_ Copies of the *in forma pauperis* application or order granting *in forma pauperis* (one for each defendant);
- \_\_\_\_\_ Copies of the complaint (one for each defendant and one for you);
- \_\_\_\_\_ Copies of the Local Rule 33.2 Discovery Requests for prisoners (if applicable);
- \_\_\_\_\_ USM-285 Marshals Service forms (one for each defendant);
- \_\_\_\_\_ Memorandum from the *Pro Se* Clerk to the United States Marshals Service (regarding extra copies for service);
- \_\_\_\_\_ Memorandum from the *Pro Se* Clerk to the United States Marshals Service (included only if you are suing government officials).

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